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Security Council

Fifty-sixth year

Provisional

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Tuesday, 27 November 2001, 10.20 a.m.

New York

President:	Miss Durrant	(Jamaica)
Members:	Bangladesh	Mr. Chowdhury
	China	Mr. Wang Yingfan
	Colombia	Mr. Valdivieso
	France	Mr. Levitte
	Ireland	Mr. Ryan
	Mali	Mr. Ouane
	Mauritius	Mr. Jingree
	Norway	Mr. Strømmen
	Russian Federation	Mr. Lavrov
	Singapore	Mr. Mahbubani
	Tunisia	Mr. Jerandi
	Ukraine	Mr. Krokhmal
	United Kingdom of Great Britain and Northern Ireland	Mr. Eldon
	United States of America	Mr. Cunningham

Agenda

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-178.

01-65982 (E)

The meeting was called to order at 10.20 a.m.

Adoption of the agenda

The agenda was adopted.

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994

The President: I should like to inform the Council that I have received letters from the representatives of Bosnia and Herzegovina, Rwanda and the Federal Republic of Yugoslavia, in which they request to be invited to participate in the discussion of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the discussion, without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

I extend a warm welcome to Mr. Jean de Dieu Mucyo, Minister for Justice of Rwanda.

At the invitation of the President, Mr. Mucyo (Rwanda) took the seat reserved for him at the side of the Council Chamber.

At the invitation of the President, Mr. Kusljugic (Bosnia and Herzegovina) and Mr. Šahović (Federal Republic of Yugoslavia) took the seats reserved for them at the side of the Council Chamber.

The President: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council decides to extend an invitation under rule 39 of its provisional rules of procedure to Judge Claude Jorda, President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

There being no objection, it is so decided.

I welcome Judge Jorda and invite him to take a seat at the Council table.

In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council decides to extend an invitation under rule 39 of its provisional rules of procedure to Judge Navanethem Pillay, President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994.

It is so decided.

I welcome Judge Pillay and invite her to take a seat at the Council table.

In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council decides to extend an invitation under rule 39 of its provisional rules of procedure to Ms. Carla Del Ponte, Prosecutor of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994.

It is so decided.

I welcome Ms. Del Ponte and invite her to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations.

At this meeting, the Security Council will hear briefings from the Presidents and Prosecutor of the International Tribunals for the Former Yugoslavia and Rwanda.

I give the floor to Judge Jorda, President of the International Tribunal for the Former Yugoslavia, to whom the Council has extended an invitation under rule 39 of its provisional rules of procedure, in order to brief the Council.

Judge Jorda *(spoke in French)*: I am deeply honoured to be addressing the Council again as President of the International Tribunal. As members are aware, a short while ago my colleagues once more displayed their confidence in me, and I will endeavour to show myself worthy. I am also pleased to have at my side President Pillay and the Prosecutor, Ms. Del Ponte, as we report to the Council on the situation of the International Tribunal over which I preside in The Hague, and inform the Council about our concerns regarding the continuation of our activity in the years to come.

In the eighth annual report of the International Tribunal, which I had the honour of presenting to the General Assembly yesterday, members will find a comprehensive statement of the activity and reforms we undertook last year.

Today I would like to draw the Council's attention more specifically to two questions which I believe merit in-depth reflection. The first is as follows: in the light of the upheavals recently witnessed both in the States of the former Yugoslavia, which are now more inclined than before to try their nationals themselves, and on the international scene, where the fight against terrorism — as the Council knows better than I — has become a new priority for the Member States, must we not reflect in concert on the future directions to give to the International Tribunal? The second — which unfortunately is not a new one — may be put thus: how can all the high-ranking political and military officials still at large who, through their crimes, allegedly jeopardized peace and security in the Balkans be arrested at the earliest possible opportunity?

These two questions deserve to be raised, as I see it, at this juncture when the judges of the Tribunal, which is of course an ad hoc institution, are embarking on their third mandate after already eight years of activity and are reflecting legitimately on the continuation and accomplishment of their work.

Yet, before sharing with the Council these two matters of concern, allow me to give a brief overview of the current status of the International Tribunal and the reforms undertaken in the period under consideration.

The structural and operational reforms of the International Tribunal are producing their initial effects and leading to a substantial increase in its activity.

The year 2000-2001 will undeniably have been marked by the implementation of four major reforms of the structures and operations of the International Tribunal.

Briefly, I will remind the Council that the first reform seeks mainly to expedite the proceedings. It gives the judge a more active role during both the pre-trial phase and the trial itself. Through the use of ad litem judges, it also makes it possible to increase the International Tribunal's trial capacity. This is in accordance with internal reforms.

At this point, I would like to offer the Council my special thanks for having acted so rapidly in support of this reform that is essential for the future of the Tribunal, and for having adopted resolution 1329 (2000) of 30 November 2000 to this end.

The second reform, which is currently being implemented, seeks to improve the organization and operations of the two International Tribunals' Appeals Chambers, which will soon be faced with a significant increase in workload as a result of the expanding activities of the Trial Chambers. This is a matter of consistency: in reforming the Trial Chambers, we are reforming the Appeals Chambers as well.

The purpose of the third reform is to provide the International Tribunal with a genuine defence organ. Ensuring that the trials are balanced has been one of the everyday concerns of the judges since the Tribunal was established. Beyond counsel actually being in court, such balance requires that there be a defence counsel organization guaranteeing counsel's independence and professional ethics. The bar — a sort of international bar — should come into being in 2002 once the necessary consultation has been completed, in particular with defence counsel.

The fourth reform, which has already been carried out, concerns the three organs of the International Tribunal: the Chambers, the Office of the Prosecutor and the Registry. So that these organs coordinate more closely in setting the judicial priorities and so that the resources of the International Tribunal are better managed, a Coordination Council and a Management Committee were instituted in January 2001, and they have met several times since.

With the adoption of these reforms, the judicial activity of the International Tribunal has increased. As of September 2001, following the adoption of the Security Council resolution, the first six ad litem judges began to serve in three new trials. Thus, for the first time in its history, the International Tribunal is hearing four trials at once. As of January 2002, three new ad litem judges will serve at the International Tribunal. The Trial Chambers will be holding six simultaneous trials on a daily basis, which will make it possible for the International Tribunal to double its trial capacity, as I promised the Council last year. This will enable us — with the reservations I will present later to complete the Trial Chamber proceedings in 2007-2008. Of course, to achieve that objective, the accused must continue to be arrested and to surrender voluntarily at a sustained rate. The necessary resources must also be granted to us in order to sustain particularly the work of the ad litem judges. That is a target that at this time would seem to me difficult given the imminent adoption of the 2002-2003 budget. It is my duty to recall that. Nonetheless, it is a target that we will try to achieve: carrying out these six trials simultaneously beginning in January 2002.

The increase in judicial activity would not have been possible had it not been for the Member States' closer cooperation with the International Tribunal and their increased participation in arresting the accused and gathering evidence. I would underscore the change of political regime in the Republic of Croatia, which resulted in enhanced cooperation with the International Tribunal. The arrest of Slobodan Milosević and his transfer to The Hague likewise constituted a historic turning point.

However, this new spirit of cooperation — the Prosecutor will address this better soon — is still too inconsistent, and it must be continued with respect to all the accused, particularly Mr. Karadzic and General Mladic, who are still on the run more than six years after having been charged. I must recall that. This is just one example. We have 29 fugitives. The Council should know that. It is obvious — and the Prosecutor will speak to the Council about this state of cooperation — that I would not hesitate, since I have received the Prosecutor's report on this, to officially bring to the Council's attention, in view of the powers conferred on me by the statute and the rules of evidence and procedures, the failure of the States concerned. That cooperation should also be broadened with respect to the enforcement of sentences, as envisaged by the statute. I will return to this in a moment.

It is against this international backdrop, now more favourable towards the Tribunal, that the number of people who have been arrested or who have voluntarily surrendered has multiplied in the last few months, bringing the number of accused detained in The Hague to 50. The activity of the Trial Chambers has greatly increased: six judgements affecting 17 accused were issued, and several hundred decisions were issued during proceedings. The Appeals Chamber has issued some 30 interlocutory decisions and three judgements on merits for seven of the accused.

However, I wish to inform the Council today about my second concern, which, in my view, is the most critical one. The Tribunal is fully operational — I believe that I have demonstrated that today — thanks to the Council's unfailing support for us. But the Tribunal is facing a new reality. Should not its priorities not be rethought?

The political upheavals recently witnessed in the Balkans have gradually changed the perception of the International Tribunal held by the States of the region. However, should these upheavals not also lead us to change our own view as to the ability of these States to try some of the war criminals in their territory? From this perspective, should we not, for example, further promote the new national reconciliation processes the Balkan States are setting up, such as the truth and reconciliation commissions?

On the international scene, where other priorities are gradually, and legitimately, taking centre stage for Member States, particularly the fight against world terrorism, the International Tribunal must more than ever accomplish its mission in an expeditious and exemplary fashion. This is especially so given that public opinion challenging the legitimacy and the credibility of the International Tribunal that is called

on to try crimes, some dating back over 10 years, is beginning to make itself heard.

Admittedly, as I indicated yesterday to the General Assembly, we can still introduce other internal reforms in order to expedite the proceedings further, and I will actively devote myself to so doing. Yet it must be acknowledged that the proceedings have already been substantially transformed by the four major reforms I have just mentioned and can no longer be appreciably amended without interfering with the fundamental features of an international criminal trial as defined by the Council in the statute.

For this reason, we should think together about new directions to assign to the International Tribunal for the years ahead. Allow me to try to outline them.

The judges of the two International Tribunals, who met last September in Dublin in the presence of the Secretary-General's representative, Mr. Hans Corell, reflected on the priorities to assign to the International Tribunal for the years to come. In examining the results and prospects of their mission after eight years of activity, they first discussed whether — as called for in Security Council resolution 1329 (2000) of 30 November 2000, which provided us with support so that we were able to expedite proceedings — the International Tribunal should not focus more on prosecuting crimes constituting the most serious breaches of international public law and order, primarily those committed by high-ranking military and political officials. After all, it is mainly those crimes that jeopardize international peace and security. Ms. Del Ponte, whose responsibility it is to initiate prosecutions and to whom I would like to pay tribute at this point, shares many of our concerns on this issue.

The cases of lesser importance for the Tribunal — although, as we would all agree around this table, all criminal matters are important — could, under certain conditions, be relocated; that is, tried by the courts of the States created out of the former Yugoslavia. This solution would have the advantage of considerably lightening the International Tribunal's workload, thereby allowing it to complete its mission even earlier. Moreover, it would make the trial of the cases referred to the national courts more transparent to the local population and make a more effective contribution to reconciliation among the peoples of the Balkans.

However, let us understand clearly that in order for the International Tribunal to further focus its activity on prosecuting and trying the major military leaders and high-ranking officials, the States must participate even more actively in arresting and transferring them to The Hague. As the Council is aware, some of them still reside with total impunity in the Federal Republic of Yugoslavia, while others have taken refuge in the territory of the Republika Srpska. If these great leaders are arrested on 15 December 2007, we will certainly not be able to finish our work on 31 December 2007. That is obvious.

For it to be possible to relocate the cases of lesser importance for the Tribunal, the judicial systems of the States of the former Yugoslavia must be reconstructed on democratic foundations. The national courts must be in a position to accomplish their work with total independence and impartiality and with due regard for the principles of international humanitarian law and the protection of human rights. This would suppose, among other things, that, under the aegis of the representatives of the international community in the Balkans, for example, judges or international observers would be sent to participate in or be present at the trials of war criminals and that the training programmes for local judges already set up would be expanded.

I am aware that the process of judicial reconstruction is making good progress, and I wish to emphasize that the International Tribunal is prepared to make its contribution. I would also like to state that we are prepared to reflect on what amendments to the rules of procedure and evidence would be implied by a redefinition of the relationship between the International Tribunal and national courts or, indeed, the other processes of reconciliation.

I will conclude by stressing that we have implemented almost all the reforms we have considered vital and that they are beginning to produce the desired results. It nonetheless remains that to complete the work of the International Tribunal within a time frame compatible with the mission conferred on it by the Council, fresh reflection — and this is my own view — must be undertaken, in particular on the basis of the various observations I have just set out.

For my part, and within the strict limits of my authority, I remain at the Council's disposal to collaborate in this exercise of reflection and, indeed, in any ensuing action. I believe that after eight years of intense activity, this process of reflection is both appropriate and crucial. Upon it hangs the ultimate

success of an unprecedented undertaking that the Council has instigated, one whose role as a forerunner will undeniably be decisive for the International Criminal Court, whose opening is now more imminent than ever.

The President: I now give the floor to Judge Pillay, President of the International Criminal Tribunal for Rwanda, to whom the Council has extended an invitation under rule 39 of its provisional rules of procedure, in order to brief the Council.

Judge Pillay: It is my honour to present to the Council a report of the activities of the International Criminal Tribunal for Rwanda (ICTR), and I thank the Council sincerely for giving me this opportunity to address it.

At the ICTR, we have had excellent cooperation from States with respect to the execution of warrants. Therefore, my focus on behalf of the ICTR will be on the work of the Tribunal. Thereafter, I shall address the Council on the need for an increase in the judicial capacity of the ICTR.

I am pleased to report that since my last address, a number of judicial, administrative and prosecutorial steps have been taken to prepare the ground for holding uninterrupted trials this year. These endeavours have included a change in management, the finalization of pre-trial litigation and disposing of the backlog of some 200 motions.

As a result, there has been a significant increase in the number of trials. Seven trials involving 17 accused persons are presently in progress. All three Trial Chambers are engaged in simultaneous trials on a twin- or multi-track system, with two of the Trial Chambers each conducting two trials and the third holding three trials. This is the result of the judicial pre-trial decisions and measures taken in previous years. We are now seeing the impact of this preparatory work in the ongoing trials. Three of these trials are joint trials of three to six accused and, by virtue of their complexities and magnitude, will necessarily take a long time to reach finality. Nevertheless, during the years 2002 to 2003, the Council may expect judgements in the cases of a very large number of accused.

I want to assure the Council that all the judges of the ICTR are resident on a full time basis in Arusha and are working full time. Our court hours are regular, and when judges are not in the courtroom, they are deliberating, issuing rulings and drafting judgements. In the past, there have been periods of time when cases were unexpectedly delayed or not ready for trial as anticipated, which caused gaps in the work schedule of judges. This is no longer the case. The ICTR schedule for court hours and recess is the same as that of the International Criminal Tribunal for the former Yugoslavia (ICTY). Visiting judges from national jurisdictions have commented on the taxing nature of our schedule, which is compounded by the hardship conditions under which we work.

I will now briefly review the status of ongoing trials to illustrate some of the factors that have caused delay in these proceedings, as well as some of the steps we have taken to expedite them.

Trial Chamber I is currently conducting two trials. One is the media trial, which commenced on 26 October 2000, in which 34 prosecution witnesses have testified, from a list of 97. The list has, after several status conferences, been reduced to fewer than 50 witnesses, and the prosecution is expected to close its case by May next year. However, this case, because of its complexities, is not expected to end before December 2002. The second case, involving father and son — this is the case of Pastor Elizaphan Ntakirutimana, who was transferred to us from the United States — is expected to be completed before June 2002. Here also, we have heard 19 prosecution witnesses, and we limited the number of witnesses that needed to be called.

Trial Chamber II has had some setbacks. It is proceeding with a big case, called the Butare trial, covering six accused, and two other trials, involving Government ministers. These trials had commenced in March and April this year but were brought to an abrupt end by the death of the Presiding Judge, Judge Laïty Kama, on 7 May 2001. However, as a result of the expeditious election of two new judges by the General Assembly on 24 April 2001 and the appointment of a third judge by the Secretary-General on 31 May 2001, the trials were able to begin, albeit *de novo*, without further delay. So the heavy caseload of this Chamber means the judges will not be able to undertake new cases for at least two years.

Trial Chamber III has the big case of Cyangugu, involving three accused, and the Semanza case. Here also, the judges actively intervened to limit the number

of witnesses that are necessary. The short case is expected to conclude by February 2002, and the long case of Cyangugu will go on. But since February 2000, Trial Chamber III has been getting the military case of Colonel Théoneste Bagosora and three others ready for trial. Twenty-seven pre-trial decisions were delivered, each decision taking the case closer to the trial stage. So, given that the Chamber is about to conclude one of its two other cases, while the second one is well advanced, it will begin the military trial on 2 April 2002.

With regard to judgements of the ICTR, on 7 June this year Trial Chamber I delivered the Tribunal's first judgement of acquittal, of Bourgmestre Ignace Bagilishema. This judgement has been appealed by the Prosecutor, and so the Chamber ordered his conditional release to France.

The Appeals Chamber has rendered decisions in appeals involving five appellants. All of these decisions confirmed the convictions and sentences, although in the Musema case the rape conviction was quashed on the basis of additional evidence led by the appellant before the Appeals Chamber. However, these decisions of the Appeals Chamber, in my view, are significant endorsement that the trials conducted by the ICTR are fair and that the standard of proof beyond a reasonable doubt to sustain a conviction is being observed.

The question has been asked of us by many members of the Council as to why the output of judgements is so low — a single judgement this year and just eight in the four years since trials started, in 1997. The fact is that only one case was ready for trial in the autumn of 1999. Other cases that were ready for trial by both the Prosecutor and the defence in the year 2000 are the ones ongoing now. However, I shall briefly refer to some of the difficulties obstructing expeditious trials, and also the efforts and developments that the judges have made towards reducing the delays and increasing efficiency.

It is important to recall that judicial proceedings at the international level are far more complicated than judicial proceedings at the national level, and unlike national courts we rely on many factors beyond our control. Cases at the ICTR are legally and factually complex because of the alleged rank, status and roles of the accused.

The Prosecutor's strategy has, from the outset, focused on those suspects who are alleged to have been in the highest positions of leadership and authority and those who are alleged to have taken the most prominent roles in the events in Rwanda in 1994. Consequently, many of the accused persons who have been indicted, some of whom are currently standing trial, include the former Prime Minister of Rwanda, Government ministers, high-ranking military officers, senior media personnel and public figures. Trials of accused persons who are alleged to have been the architects of killings are far more complicated and take longer because command responsibility has to be established and the range of facts at issue is far greater. Thus these trials, which I submit are particularly applicable to the ICTR rather than the ICTY, take longer than the trials of accused persons with lower levels of alleged responsibility.

Other factors that contribute to lengthy and protracted trials are the voluminous documents and translation requirements, the large number of witnesses and the interpretation of testimonies involving three languages: Kinyarwanda, French and English. The Prosecutor and the defence are engaged in ongoing investigations. It is also important to note that, unlike national courts, witnesses and counsel are not within geographical proximity to the ICTR and so are not within easy reach. Witnesses for both the prosecution and defence are located in Rwanda and in countries all over the world. They have to be persuaded to volunteer as witnesses. Negotiations have to be undertaken with Governments for their travel, travel documents and protective measures. All these things are time-consuming and often result in adjournments of the trial.

Added to those factors are the handicaps of having to function out of a hardship "C" duty station. In the past year, six staff members have died of illness or accident. Simple communications that would take one hour in The Hague may take days, or even weeks, in Arusha. This is a reality that we must contend with.

On the other hand, the judges have taken measures to expedite proceedings. I shall mention a few of them. They involve expedition at the pre-trial stage, which Judge Jorda referred to. We decide most of those motions on briefs, which saves court time and the costs of travel to bring defence counsel. Motions are dealt with by a single judge. We also now engage in long-term planning of court schedules, and we exercise greater control in the courtroom in order to minimize

loss of time. Our interest in efficiency, however, must be subject to our interest in ensuring fair trials, and the defence must be given sufficient time for preparation and cross-examination. In some cases, judges have imposed sanctions for time-consuming tactics, for instance by denying costs for frivolous motions. The level of communication and cooperation between the various branches of the Tribunal, such as the Chambers and Registry, has also improved. Of course, we also have the fact that there are now precedential rulings and appeal decisions that provide a guide to the parties, which in turn curtails motions.

Issues of efficiency were discussed at length by the judges of the two Tribunals at seminars at Ascot and Dublin. There was broad consensus that the delays experienced by both Tribunals needed to be addressed and that there was a need for greater control over the presentation of evidence by the parties. We are now implementing greater controls over the number of witnesses, the length of their testimony, and so on. These measures have already had an effect and are among the reasons for the significant acceleration of our trial activities. However, there are limits to what can be achieved with the present three Trial Chambers.

The Council may recall that, when I addressed it last year, I expressed our commitment to complete as many cases as possible of persons awaiting trial in our detention facility within the present four-year mandate. As already mentioned, the trials of 17 persons are underway and 26 detainees are awaiting trial, of whom four were transferred to the ICTR in the last three months. A further 22 suspects have been indicted and are still at large. If the present capacity of nine judges remained unchanged, the Tribunal will not be able to complete the trials of the current detainees before the year 2007. The judges find this to be unacceptable, as some of the detainees have been awaiting the commencement of their trials for considerable periods of time. International standards require that accused persons be tried without undue delay.

Those difficulties are further compounded by the fact that the Prosecutor has informed me that she anticipates indicting up to 136 new accused persons by the year 2005. The Tribunal's capacity must be increased in order for us to try those cases in accordance with international fair-trial standards. It was for this reason that on 9 July 2001 I submitted a proposal to the Security Council for the creation of a pool of ad litem judges, similar to the solution that the Council found for the ICTY by virtue of resolution 1329 (2000). If the judicial capacity is increased with ad litem judges, and if the Prosecutor drastically revises her investigative programme, I believe that the ICTR can complete its work by 2007, rather than the projected date I gave in my report, of 2023.

The request for ad litem judges is presently under consideration by the Security Council. I hope that this remedy will be provided for the ICTR, as it was for the ICTY when it faced a similar situation. The progress of trials since my request of 9 July 2001 now enables me to present to the Council an updated plan for the immediate use, once elected, of nine ad litem judges by two of the Trial Chambers, splitting into five sections. These five sections would be able to begin five new trials involving between 14 and 17 accused between April and June 2002. So, with the three current Chambers and these five subsections, we would have eight trials going on simultaneously.

Each section would generally have a mix of permanent and ad litem judges, which would help ensure the consistency of the Tribunal's jurisprudence. Even in those exceptional cases where ad litem judges might serve alone, we believe that consistency would be maintained through the established jurisprudence of the Tribunal. It is important that the ad litem reform be decided as soon as possible, with two aims in mind: to supplement the present trial capacity in relation to currently detained accused, and as an essential measure for future indictments and arrests by the Prosecutor.

Together with the ICTY judges, we have reflected on the lifespan of the Tribunals. We are concerned that the passage of time may affect the quality of the evidence and that long delays raise human rights concerns. We recognize that this is a political decision that can be taken only by the Security Council. The ICTR judges are of the opinion that the target date for completion of our mandate should be 2007, and we hope we will get the support we need to make this possible. Meanwhile, I would urge that other avenues of justice be pursued as well, such as the encouragement of trials at the national level in jurisdictions where suspects are located.

In conclusion, I wish to place on record the Tribunal's appreciation to States for their cooperation over arrests, transfers of indicted persons and travel of witnesses, and for receiving acquitted and convicted persons. I particularly thank the following

Governments: Ireland, for its contribution to hosting the judges' seminar; the French Republic, for receiving and agreeing to monitor an acquitted person, and the Republic of Mali, for receiving convicted persons. Five convicted persons, including Jean Kambanda, Prime Minister of the interim Government of Rwanda, will begin serving their sentences of imprisonment for 25 years to life, in Mali starting this month.

I am optimistic that many of the factors impeding our progress to date have been and are being addressed effectively. I wish to thank the Secretary-General for his support in this regard. However, we need the Council's further support. The ICTR and the ICTY are engaged in a historic endeavour and should both be supported, and supported equally. We have a long way to go in establishing the rule of international law to safeguard the principles of peace and justice, which are so fundamental. Despite the many setbacks and daily frustrations, we are making progress.

The President: I thank Judge Pillay for her comprehensive briefing on the work of the International Criminal Tribunal for Rwanda.

I now give the floor to Ms. Del Ponte, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, to whom the Council has extended an invitation under rule 39 of its provisional rules of procedure, so that she may brief the Council.

Ms. Del Ponte: I am grateful to have this opportunity to appear before the Council to provide an update on the work of the Prosecutor's Office in the two International Tribunals. It is my assessment that both the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) are poised to enter the most important phases of their existence, and are both about to begin their major criminal trials.

Much crucial work is still before us in both the ICTY and the ICTR, but we are also now in a position to begin to see how the Tribunals may complete their mandates. We are starting to consider what has been called our "exit strategy". I know that the Council is particularly keen to have an understanding of what my future prosecution policy will be and how much work the Tribunals will have to do before they can complete their respective mandates.

Although there are substantial differences in the nature and complexity of the conflicts in the two continents — in the scale of the killings and the time scale of the events — it goes almost without saying that my focus in both situations is on the leaders. Any lower-level cases that are going through the system either can be explained in terms of the history of the Tribunals' development or concern notorious individuals whose conduct stands out despite the fact that they had no formal position in any hierarchy. Instead, today I would like to explain two aspects of our policy. These aspects apply equally to Rwanda and to the former Yugoslavia.

First, we have not investigated all crimes. We have concentrated on the areas in which the worst massacres occurred. So there have not been in-depth investigations of every municipality, or *opstina*, in Bosnia or every commune in Rwanda. But we have established that both the genocide in Rwanda and the ethnic cleansing in Bosnia were highly organized criminal enterprises — centrally organized at the highest level, and pursued with enthusiasm at the regional and local levels.

Even at these command levels, we are not dealing with a small handful of individuals, whatever impression the general public may have about how many architects there were. From the many thousands of significant targets, we have selected under 200 in each Tribunal, and we do not even expect to prosecute all of them. Many, many important crimes have therefore been left to be dealt with by national jurisdictions. In order to appreciate the scale of the undertaking, we have only to look at the internal Rwandan justice system, where we see in the traditional *gachacha* process that 11,000 local jurisdictions, involving 260,000 local judges, will be dealing over a three-year period with 120,000 perpetrators of the genocide, in which between 800,000 and 1 million people died in the space of four months.

Secondly, one should not fall into the trap of separating the accused into big fish and small fish. A number of the accused under investigation in the ICTY and the ICTR played a very nasty role somewhere in between these two extremes — as key organizers and motivators at the district or local level. They had strong links to the central power base and were fully aware of the overall criminal enterprise, but they also fervently put the plan into action in their areas and had blood on their own hands. In the former Yugoslavia, some of

these individuals still occupy official functions, and their activities are an obstacle to the peace process. In Rwanda, the genocide exploded quickly in the areas where such people fanned its flames, whereas in other regions, without these willing perpetrators, the number of killings was lower, and the massacres were less extensive. For the local people, the victims and the survivors, it was these people who brought their world to an end, not the remote Governmental architects of the overall policy of genocide. Unless these local leaders are brought to justice in both Rwanda and the former Yugoslavia, the ordinary population will not come to terms with the past, and the process of reconciliation and building a stable peace will suffer accordingly. That is why these cases justify my attention, and that is why the choice of cases to pursue is not at all simple. The crimes were highly organized, directed and implemented at a number of levels, each of which depended on the other.

We have previously given figures for the remaining investigations - 36 for ICTY, involving a total of 150 accused, and 136 for ICTR, involving a total number of 136 accused, since each investigation there concerns a single target. The Council, however, should not think that these figures present the picture of a prosecutor out looking for business and ranging broadly over all possible suspects, whatever their involvement. On the contrary, the figures represent, as I have said, only a fraction of the potential number of crimes or suspects, all of which involve mass murders, multiple killings, or other crimes at the very highest end of the scale of national or international crimes. In fact we turn most cases away.

If there is any public concern about the number of investigations, it is a concern about resources, because it cannot be a concern in terms of justice. There may be people who are saying after the events of 11 September that the world has moved on, and the issue of the day is now terrorism, not past conflicts. We cannot take that view of international justice. There is now all the more reason for the international community to harden its resolve to pursue those responsible for genocide and crimes against humanity. It is neither credible nor honourable to give support to the war against terrorism while not doing everything possible to bring to justice those responsible for genocide in Rwanda, in Srebrenica and in other massacres. As with the fight against terrorism, we delude ourselves if we think there is a quick and low-cost solution that does the job properly. The Tribunals must have sufficient means to do their job, and all the projections we make about the remaining workload are made on the assumption that the two Tribunals will be given the resources that we have sought in our budget submissions for the next two years.

I know that earlier this month the Council held informal consultations to discuss the question of ad litem judges for the ICTR. Tribunal representatives were present to listen to the views being expressed, and certain concerns were relayed to me about prosecution policy. First, let me say that I strongly support the appointment of ad litem judges for two reasons. We must increase our capacity to hold the trials of accused who have already been in custody for long periods. And we must also be able to process new cases within a reasonable time. These are separate compelling justifications for increasing the number of available trial chambers.

I understand that the Council is broadly sympathetic to the request for ad litem judges, but I also understand that you need more information from me about my prosecution policy.

Let me therefore give you specific details of my prosecution policy in the ICTR. Fifty-three accused are in custody; some cases have been dealt with; 17 accused are currently on trial; 25 are in custody awaiting trial. More than 20 are still at large, including major figures who have found refuge in countries outside Rwanda and who are beyond the reach of any national jurisdiction.

Our investigations concentrate not on geographical areas of Rwanda, but on prominent figures in the command structures of the Government and the military and in other walks of life such as the media, the clergy, the intelligentsia and the business world. The only prospect of bringing those people to justice lies with the International Tribunal, and we have demonstrated our ability to track them down. Our specialist tracking teams often work in the most difficult conditions to locate their targets, but it can be done, and it is being done. This year, nine accused have been arrested so far.

As things stand, bringing existing detainees to trial in the courtrooms will take us well into 2005 or even beyond. In addition, I indicated at the beginning of this year that I intend to complete a further 136 new investigations, to bring our investigative mandate to

completion by the end of 2004. That programme, which involves a maximum of 30 new indictments per year, appears to have caused some alarm, and I hope it is not being misunderstood.

The figure of 136 represented the very outside estimate of our future workload. The figure is the number of investigations, not the number of trials. Many factors will affect whether or not an investigation results in an actual prosecution. In a significant number of cases the accused are confirmed to be dead. Not all investigations succeed in gathering sufficient evidence. Not all accused can be traced or arrested, and the number of trials will be lower than the number of arrests because the accused can often be tried jointly. In one current trial, six accused are being tried together. Working down from the outside number, our original estimate was that the 136 investigations might result, at best, in 45 new trials, perhaps even fewer.

What does that mean in additional years of work for the ICTR? Assuming, after the major prosecutions are over, that subsequent trials can be much more streamlined in terms of their proof, we are probably looking at another four years of trial work for the Tribunal after the existing business has been processed. That is what we can expect from our investigations programme. Four years added to the end of 2004 would bring us to the end of 2008.

This year, we are largely on course to meet our investigative targets. Nineteen cases are reaching the indictment stage now, and 21 other investigations are ongoing. It is true that some of these are suspects who were involved at the local level, but to cite just a single example, one of these targets is believed to be implicated in the killing of between 20,000 and 30,000 people. That demonstrates the scale of the crimes we are continuing to address in Rwanda, even in our new cases.

For those ongoing investigations, we will depend upon the close cooperation of States, including Rwanda itself. One new area that we are addressing concerns allegations of crimes committed during 1994 by members of the Rwandan Patriotic Front (RPF) forces. The success of those inquiries will be especially affected by the degree of support we have from the Rwandan Government. The extent of their collaboration remains to be seen. We also intend to move away from our policy of sealed indictments to a policy of greater use of circulating arrest warrants openly through the INTERPOL red notice procedure and taking advantage of reward programmes for information leading to arrests. We are particularly interested in the situation in the Democratic Republic of the Congo, and have begun to explore with the authorities in Kinshasa whether we can trace suspects there. It is essential that we do so.

I believe that in these circumstances my investigative strategy is fully justified by the facts. I am satisfied that cases are being carefully and properly selected for prosecution in the international forum. In addition, individual cases are constantly reviewed as to their viability and suspended or discontinued if need be. No reason or principle can be found based on the public interest in the pursuit of justice that would justify a radical departure from the existing policy.

But I hope we shall not come to that point. Ad litem judges are required to deal swiftly with existing business, irrespective of the future court programme. If the capacity of the Tribunal were to be increased for this reason, there would certainly be a substantial shortening of the Tribunal's life. I agree with the estimate that existing trials could probably be completed by the end of 2004, and that the remaining trials could be dealt with by the end of 2008.

In the Office of the Prosecutor we are prepared to aim at such a date, even if that means adjusting the content and presentation of the later trials accordingly. I am determined to address the quality and focus of our prosecutions. I have already set about changing the whole approach of my staff so that the emphasis at all times is on making the best use of resources. We must ensure that all activity, both in investigations and in prosecutions, is especially directed towards meeting the evidential and legal needs of the Chambers. I am resolved to present cases with much greater precision and focus than in the past and to explore all available avenues to speed up the proceedings without losing the essential fairness of the trial process. If we do that, in my estimation, the close of 2008 might be a realistic date for the end strategy for the trials in the ICTR.

If I might now turn to specific issues for the ICTY, I can inform the Council that, in The Hague, we are also planning strategically for the future. Our programme of outstanding investigations, publicly revealed in 1999, is under constant review. Four investigations relating to Kosovo and Macedonia have

been added to the original list of 36, bringing the total to 40. A review of the status of these investigations has been carried out in recent weeks. Four have been successfully completed; a further four have been incorporated into other ongoing cases; six have been discontinued; and a further 10 have been identified as potentially suitable for prosecution at the national level. These 10 have been suspended pending a review in a year's time. The 16 remaining investigations are active and are now being resourced according to their priority. Together, the active and suspended cases involve 108 potential accused and an estimated 34 new indictments, approximately half of which might appropriately be dealt with by national courts. The deadline is still to complete the outstanding investigations by 2004.

There is an interesting possibility for an ICTY exit strategy — namely, as I have just suggested, that some cases might be referred to courts in the former Yugoslavia for prosecution. The Tribunal's rule 11 *bis* already envisages the referral of cases, but it has not yet been used and it is doubtful whether a suitable judicial process exists at the national level. Adequate measures have yet to be taken for the protection of witnesses. As the majority of the cases are from Bosnia and Herzegovina, I have therefore suggested in Sarajevo the idea of designing a special court in Bosnia and Herzegovina that would have an international component or of developing an existing state court to perform this special task. That court would deal with cases referred to it by the ICTY either during or after the completion of our mandate, and it might also deal with other sensitive war crimes cases, which are presently submitted to my office for review under the "Rules of the Road" scheme following the Rome Agreement of 18 February 1996.

The idea of a national forum involving the participation of international prosecutors and judges to deal with war crimes cases has so far been well received by the Office of the High Representative, by the Presidency in Bosnia and Herzegovina and by certain States. Much work would have to be done to establish the required prosecutorial and judicial mechanism. My Office stands ready to assist the development process in any way possible, since I am aware of the international community's desire to see both Tribunals finish their work in a timely fashion. If we began to design a special court in Bosnia and Herzegovina now, it might well be up and running by 2004 and able to begin taking accused in the kind of cases we have identified for our own investigations as being suitable candidates for national prosecution.

I would not, however, be ready to hand over prosecution of my cases to national courts as they now operate. War crimes cases are still politically sensitive in the region and the international community must promote equitable national jurisdictions and legal institutions. The United Nations must have an important role to play in this regard.

I must speak also about State cooperation with the Tribunal, which remains problematic. It takes a great deal of time and effort to achieve cooperation and we do not yet enjoy full cooperation across the board in the former Yugoslavia. Some time ago, the Council was seized of the issue of non-cooperation by Yugoslavia and then by Croatia. Last year, I was able to report that the situation with Croatia had improved, but that full cooperation was not yet forthcoming. At present, I can reiterate that, in some areas, we have managed to make advances with the Croatian Government, but there are still areas where progress is very slow, especially in the production of documents.

I am constantly in a constructive dialogue with Zagreb. I expressed my disappointment about the non-apprehension of General Gotovina and was assured that the Government remained committed to arresting him and transferring him to The Hague. However, it appears that General Gotovina has been allowed to escape arrest and I wish to bring that unsatisfactory situation to the attention of the Council. I also call on Croatia to overcome any remaining obstacles and to stand firm on the path of full cooperation.

With the Federal Republic of Yugoslavia, the picture is very complex and often discouraging. Working with Prime Minister Djindjic and the Serbian authorities at the republican level, we have experienced good results in terms of arrests and access to evidence. The transfer of Slobodan Milosević to the Tribunal was a groundbreaking event and a courageous step by the Serbian Government, but cooperation at the federal level appears to be blocked for reasons of domestic politics. Despite their declarations, the federal institutions obstruct the work of my Office. State cooperation does not begin and end with the surrender of accused. We need access to documents, archives and witnesses. At the federal level, access to these important sources of evidence is being denied to us on

the pretext that no domestic legislation authorizes it. And, while the Yugoslav federal authorities continue to claim that an internal law must be enacted in order for the Federal Republic of Yugoslavia to be able to cooperate with the Tribunal, I see no effort on their part to ensure adoption of such legislation. The contrary is true.

Moreover, I regret to inform the Council that Ratko Mladic is residing in the Federal Republic of Yugoslavia under the official protection of the Yugoslav Army. As an officer of the Yugoslav Army, General Mladic is said to enjoy military immunity and is being shielded from both national and international justice. To give another glaring example, the Council will recall the efforts we have made for years now to obtain the transfer of the three accused indicted for crimes in Vukovar. In November 1998, the Council adopted resolution 1207 (1998) stressing that no State may invoke provisions of its domestic law as a justification for its failure to cooperate and calling for the arrest and transfer of the three Vukovar accused.

Nevertheless, the Army continues to harbour them with the approval of the federal Government. Instead of compliance with the specific demands of the Security Council, these indictees are allowed to defy the Tribunal publicly by making presentations of their books. The list of wanted persons sheltered in the Federal Republic of Yugoslavia has grown longer and, instead of giving clear, unambiguous support for the Government of Serbia and of taking a clear stand on cooperation with Tribunal, the federal authorities are doing everything possible to stop even limited cooperation by the republican authorities, who have been most helpful.

I have not had occasion to address the Council since the arrest and transfer of Slobodan Milosević. I would like to express my gratitude to members of the Council and to all other States, without whose insistence and support the transfer of Milosević would not have happened. Last week, a third indictment was confirmed against Milosević, covering crimes in Bosnia and Herzegovina, including genocide. The support of States is essential for the work of both Tribunals and I would also like to record my gratitude to those countries that assisted in the recent tracking and arresting of several accused for the ICTR in Arusha.

Turning to Bosnia and Herzegovina, the most problematic issue is still cooperation with Republika Srpska. A law on cooperation was recently passed, and we are now very keen to see the concrete results of its implementation. As for the authorities of the Federation of Bosnia and Herzegovina, they have once again confirmed their full commitment to cooperation by the swift transfer to The Hague of four indicted senior Bosniac military staff.

The argument all too often put forward by Belgrade and Banja Luka, and to a lesser extent by Zagreb, that cooperation with the ICTY is threatening the political stability of the country is one which should not be taken at face value. Is it easy for the Federation of Bosnia and Herzegovina to transfer a former chief of staff of the army or generals who are still widely regarded as war heroes? Although the authorities in Sarajevo stress the political difficulties that may arise from their cooperation with the ICTY, they do not invoke them as excuses for not cooperating.

Last week I visited Skopje in order to inform the authorities of the Former Yugoslav Republic of Macedonia about two new investigations opened by my Office in regard to alleged war crimes by National Liberation Army (NLA) and Government forces. The Council will be well aware of the situation in that country. Despite the fact that all parties involved in the recent conflicts have agreed that the existence of the Tribunal has already had a very positive deterrent effect, I have to admit that I am deeply worried. Until now I have experienced no problems with activities of my Office in that country. I have had full cooperation from the Government so far, and I was assured by the President and the Prime Minister that I could count on their full cooperation in regard to any of my investigations. But the real test will come when investigations are pursued and if indictments are confirmed.

I therefore appeal to the Council for its continuing support for the work of my Office, and especially ask the Council to insist upon the arrest of Radovan Karadzic and Ratko Mladic, whose continuing liberty is an affront to the authority of the Council and mocks the entire process of international criminal justice. If we are seriously resolved to enforce the rule of law against those who commit acts of genocide or crimes against humanity or terrorism, and if we want long-term stability in the Balkans, we

simply cannot allow Radovan Karadzic or Ratko Mladic to escape justice and we cannot talk in any meaningful way about the completion of the mandate of the International Criminal Tribunal unless they are brought to trial with the others in The Hague.

Those are the key issues I wished to bring to the attention of the Council. Finding long-term and comprehensive solutions for criminal justice in the former Yugoslavia and Rwanda does not lie within the mandates or the powers of the International Tribunals themselves. As Prosecutor, appointed by the Security Council, I will fulfil whatever mandate is given to me in the pursuit of international peace and security.

The President: The next speaker is His Excellency Mr. Jean de Dieu Mucyo, Minister of Justice of Rwanda. I invite him to take a seat at the Council table and to make his statement.

Mr. Mucyo (Rwanda) (*spoke in French*): It is my honour to address the Security Council today on behalf of my country, Rwanda. Following the terrible hardships that Rwanda endured in 1994 — genocide and massacre that took the lives of more than a million innocent people — my country, with the support of the international community, took the course of national reconciliation among all Rwandans in order to rebuild our society on the basis of brotherhood, solidarity and justice with respect for fundamental human rights.

There have been many programmes and activities to promote and strengthen the rule of law and democracy. But there can be no national reconciliation without justice. It is justice that will make it possible not only to eradicate the culture of impunity but also, and above all, to restore a society in which safety and security prevail.

At the domestic level, a large number of persons, including *génocidaires*, have been detained. Many people have been orphaned, widowed or maimed; we have seen genocide and massacres. To resolve these problems we have undertaken a new experiment with the establishment of the *gachacha* system of justice based on the Rwandan national tradition of participatory justice, in which the population — whose members were the only eye-witnesses to the acts of genocide — relates the facts, uncovers the truth and helps arrest and try suspects.

I take this opportunity sincerely to thank all the countries that are supporting us in our efforts to rebuild our country. The Rwandan Administration cannot face the country's post-genocide situation alone. Rwanda earnestly hopes that the support it has enjoyed in the past in strengthening its capacities and in developing programmes of justice and of national reconciliation will continue and will be strengthened.

Let me mention, in addition to our domestic efforts and achievements, the work of the International Criminal Tribunal for Rwanda. As someone said only yesterday, the 1994 atrocities in Rwanda are one of the darkest pages in human history. The Tribunal's essential task is to fight against forgetting and for justice, which will contribute to the reconciliation that is indispensable in Rwanda.

The mandate of the International Criminal Tribunal for Rwanda constitutes a challenge: if justice is not brought to Rwanda and if certain countries continue to harbour those suspected of genocide and revisionists, no people in the world can feel safe. Far beyond a single people, all of civilization could disappear. If crimes of this kind go unpunished, all of mankind will be impoverished. Justice for Rwanda will quite simply be the triumph of human rights. It is essential to bring to trial those suspected of genocide. That is why we hail the work of the International Criminal Tribunal for Rwanda; that work must continue, and it must be strengthened. Even though the number of judgements that the International Criminal Tribunal has handed down so far remains insufficient, we are encouraged by the work that the Tribunal has accomplished. This is certainly not the time to reduce its capacities; it is the time to build them up.

Rwanda supports efforts to reorganize the Court's services. We welcome the Prosecutor's investigative efforts, even though the number of arrests of suspected *génocidaires* is insufficient compared with the number of those responsible for genocide who are scattered about the globe. We assure the Prosecutor of our complete cooperation. We also support an increase in the number of judges with a view to expediting trials. Further, Rwanda is particularly pleased by reorganization efforts and by the various programmes established by the Registry. None the less, it would be good for that service to attach high importance to the following consideration.

The Tribunal's programme of information on its mandate and activities should reach the great majority of the population. If possible, a radio station could

broadcast information on justice in general. In this way, the International Criminal Tribunal for Rwanda would be better understood by the population.

Initiatives for assistance to potential witnesses should be increased and extended to the whole country. Rwanda has long been very concerned about the situation of witnesses before, during and after trial. The reorganization of the witness protection service responds to these needs. We hope that not only will the physical safety of witnesses be truly ensured; in addition, we must not forget their mental state, especially during cross-examination by the lawyers for defence. The case of widows who faint on the witness stand speaks eloquently to this.

It is urgent also to provide access to AIDS medication for those who were rape victims at the time of the genocide. Let us remember that they are slowly dying. We know that those who raped them and are now held in Arusha have free access to AIDS medication.

We encourage the Tribunal's recruitment of Rwandans, but at the same time, we appeal for greater care in the choice of persons recruited. That would prevent the abusive sharing of fees among the defence counsels and detainees or the hiring of individuals suspected of genocide, of which there have been instances.

This justice so indispensable for the reconciliation of Rwandans would carry greater weight if the headquarters of the International Criminal Tribunal for Rwanda were based in Rwanda. We are aware that is our obligation to facilitate the activities of the Tribunal. But it is hard for us to understand the desire to locate the Court's headquarters in Arusha. The reasons stated in 1994 no longer seem relevant. There are many reasons to transfer the headquarters of the Court: a reduction of the travel expenses of staff and witnesses; the speeding up of investigations and trials — especially when we will soon be starting the *gachacha* hearings and when a great deal of information will be brought before the Court; and a better awareness of the Tribunal's work among the wider population, which would greatly contribute to our policy of unity and reconciliation. We recall that in Rwanda, justice appears more pedagogical than punitive.

It would be very difficult to talk about justice and reconciliation without considering compensation for the victims. It is our duty to ensure that the survivors of the genocide are compensated. We want to see the victims who survived the genocide participate more fully in the activities of the International Criminal Tribunal for Rwanda, and we especially hope that the Court will have greater latitude in taking decisions granting compensation to victims.

Please recall that in Rwanda, beyond the divisions of foreign origin, a people was murdered. Mothers and young women were raped. Children were slaughtered. So that a people can never again be massacred in silence, help us to continue this work of justice, unity and reconciliation: justice for the accused but also justice for the victims.

I wish to conclude by emphasizing that the criticism of the International Criminal Tribunal for Rwanda must be taken as constructive criticism and not an attempt to denigrate the work of courageous individuals attentive to the mission entrusted to them.

The President: The next speaker inscribed on my list is the representative of the Federal Republic of Yugoslavia. I invite him to take a seat at the Council table and to make his statement.

Mr. Šahović (Yugoslavia): Allow me at the outset to congratulate you, Madam President, on the outstanding manner in which you have presided over Security Council deliberations on a number of extremely important issues during this month. My delegation listened with great attention to the introductory interventions of the Presidents of the International Criminal Tribunal for Yugoslavia (ICTY) and of the International Criminal Tribunal for Rwanda (ICTR), as well as the Prosecutor, Ms. Carla Del Ponte.

Yesterday and today, the activities of the ICTY have been the focus of our attention here at the United Nations, first in the General Assembly and now in the Security Council. From what has been heard so far, it appears that the prevailing assessment is that both the general climate for the Tribunal's work, especially in the area of the former Yugoslavia, and its actual performance in the course of the past year have improved. We share this view. Indeed, the present Governments of the countries directly concerned — and of course, I include my own country — adopted in the past year a constructive and cooperative approach towards the Tribunal. The ICTY, on its part, is implementing measures aimed at improving its proceedings to make them more expeditious and

efficient in order to fulfil its envisaged task in the foreseeable future.

However, it has also been stressed that much more needs to be done to achieve that objective. In this connection, one of the issues that has been raised both yesterday and today was the need for more consistent and comprehensive cooperation on the part of the Federal Republic of Yugoslavia with the Tribunal. Allow me therefore a few comments on the subject.

On many occasions in the past month, it has been emphasized from the highest levels of our Government, including by the President, the Foreign Minister and the highest Serbian and Montenegrin authorities, that the cooperation with the Hague Tribunal is of crucial importance for the Federal Republic of Yugoslavia. My country is well aware of its international obligations in that respect and is committed to fulfilling them. The federal Government and the Governments of both Republics are making serious efforts and have taken a number of concrete measures to enhance cooperation with the Tribunal. The transfer of Slobodan Milosević to The Hague is one of those measures which has been widely recognized as a major development and a turning point in that respect. A number of other indicted persons from the Federal Republic of Yugoslavia have been transferred to The Hague, as well as some from elsewhere in the region who resided in Yugoslavia. Some important voluntary surrenders also took place, including those connected to the Dubrovnik case, which was facilitated by the authorities of the Federal Republic of Yugoslavia and of the Republics.

Cooperation with the Prosecutor's Office in Belgrade is also proceeding well, we believe. The staff of the Office has full freedom of movement and the ability to discharge their duties unimpeded including interviews with victims and witnesses. Tribunal investigators participated in a number of investigations in the territory of the Federal Republic of Yugoslavia. What we consider very important at this stage is that the work on formulating an internal legal framework aimed at facilitating cooperation with the Tribunal is under way. A law on cooperation with the Tribunal, once finalized — and I hope and am confident that it will be soon — will regulate the cooperation with the ICTY in the most comprehensive manner.

Cooperation with the ICTY is a process, and it should be understood as such. If we look back at the last 12 months, we will see significant improvement. I am confident that in the coming period it will improve further. It should also be understood that cooperation is a two-way process. For its success, as eloquently stated yesterday in the General Assembly by the Ambassador of Norway, it is important that the population in the region be informed about and understand the significance of the Tribunal's work. Therefore, we believe that the ICTY should make consistent efforts to explain its mission as a balanced and impartial one. It is also extremely important to strictly preserve the Tribunal's role as a judicial mechanism for determining individual responsibility for crimes committed in the territory of the former Yugoslavia since 1991.

There were some attempts in yesterday's discussion on the report of the Tribunal to connect ICTY cases to issues related to State responsibility, which i completely outside the scope of the Tribunal's jurisdiction. Such an approach will not help efforts to achieve wider reconciliation and improvement in relations within the region. I will not elaborate here on issues related to the importance of improving the Tribunal's functioning, such as those related to sealed indictments, the frequent change of its rules of procedures or compensation for those who were acquitted, since I mentioned them yesterday in the General Assembly.

The same applies to the contribution we would like to see the ICTY make in dealing with cases of crimes committed against Serbs and other non-Albanians in Kosovo and Metohija since the deployment of UNMIK and KFOR in the province in June 1999.

However, I would like, in conclusion, to point out that all concerned should concentrate on their own responsibilities towards the Tribunal, rather than looking elsewhere or in the neighbourhood. This is what we in the Federal Republic of Yugoslavia are trying to do. Only in such a manner can we improve our capabilities to cope with the past and gradually take over, with full responsibility and in a manner consistent with the principle of the rule of law, cases that the Tribunal wishes to refer to national jurisdictions. That, I believe, should become a trend in the future, and only that can bring peace, reconciliation and recovery to the region.

The President: The next speaker inscribed on my list is the representative of Bosnia and Herzegovina. I

invite him to take a seat at the Council table and to make his statement.

Mr. Kusljugic (Bosnia and Herzegovina): The Government of Bosnia and Herzegovina welcomes the report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY), presented yesterday to the General Assembly by its President, Judge Claude Jorda, as well as the achievements of the Tribunal over the past year. I also take this opportunity to thank the ICTY President, Judge Jorda, and the ICTY Prosecutor, Ms. Del Ponte, for their clear and straightforward messages regarding the current and the future work of the ICTY that they have expressed today in their statements to the Council.

The presidency of Bosnia and Herzegovina and the central-common institutions of Bosnia and Herzegovina fully support the activities of the ICTY, not only with words, but also with their deeds. We consider that the ICTY has played an important role in the process of reconciliation and the maintenance of peace and stability, in both the country and the region as a whole. We especially acknowledge the apprehension and trial of Slobodan Milosević. We see it as a clear sign that the Tribunal will prosecute the high-level perpetrators, the strategists of the war crimes, which we consider to be its primary role. The Government of Bosnia and Herzegovina also underlines the role of the ICTY in the individualization of war crimes, as a precondition for inter-ethnic reconciliation in the region.

Yesterday, in addressing the General Assembly, I also conveyed our expectations for the future role of the ICTY. In short, we consider that the work of the ICTY will substantially, directly or indirectly, influence the following processes in my country and in the region as a whole: the return of refugees and internally displaced persons; inter-ethnic reconciliation and confidence-building; regional security and cooperation; political and economic transitions; European integration processes; and full implementation of human rights standards.

I also conveyed to the General Assembly several proposals aimed at complementing or enhancing the current ICTY activities. Today, in addressing the Security Council, I would like to underline the most important subjects upon which I elaborated yesterday.

The political parties, citizens and especially war-crime victims and witnesses in my country, have carefully followed the work of the ICTY, reflecting the impact it has had on their everyday lives. Many families, in all ethnic groups in the region and especially in my country, suffered during the 1991-1995 war. Every just decision of the ICTY helps in some way to lessen the pain and suffering of the war-crime victims and their families. Let us never forget the atrocities that were committed in Bosnia and Herzegovina: mass murder, mass rape, ethnic cleansing and even genocide, which the ICTY proved to have occurred for the first time in Europe since the Second World War: the Srebrenica massacre. This also is included in the indictment against Milosević.

For many in Bosnia and Herzegovina, especially for the war-crime victims, their relatives and friends, ICTY activities are the only hope that justice will be attained. We also expect that the work of the Truth and Reconciliation Commission in Bosnia and Herzegovina will complement the Tribunal's activities.

However, we are very disappointed and seriously concerned by the fact that 26 publicly indicted war criminals still remain at large. We should not forget that Slobodan Milosević was extradited to the Tribunal after his political programme had failed and after he had lost the presidential elections. The fact that 26 publicly indicted war criminals in Bosnia and Herzegovina, particularly Radovan Karadzic and Ratko Mladic, and many more in the region, remain not only at large, but also in position to influence political and economic developments, is a sign that their political programmes based on ethnically cleansed territories are still alive.

The extreme radical nationalists in the region lost the last elections. They have temporarily hidden their wartime objectives, mainly because of the international pressure and fear of ICTY activities. However, the fact that the 26 accused and the many who orchestrated ethnic cleansing remain at large means that the seeds of new conflicts and violence in the region remain. Recent evidence of public unrest recorded in the region has clearly shown that the extreme nationalists strongly oppose the work of the ICTY. They publicly argue that the ICTY should prosecute "their war criminals", instead of the "unjust" indictment of "our heroes".

Today, a changed political environment exists in South-Eastern Europe, reflected in the improved cooperation between the ICTY and the States in the region. However, the international community should not ignore the fact that the parliamentary majorities, in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia, on the issues related to the work of the ICTY, are fragile. Therefore, the international community should continue to support, both politically and financially, the work of the ICTY, stressing again and again that the activities of the ICTY are based on human rights and the rule of international humanitarian law, thus preventing political manipulation of the work of the Tribunal.

It is crucially important that the international community take a leading role in the arrest of the already-indicted war criminals. At the same time, it will be proof of its credibility in the region. Its readiness to attach the utmost priority to making their arrests will be proof of its commitment to universally accepted ethic and moral values.

In principle, war criminals and terrorists are the same sort of people. The anti-terrorist alliance has shown that it is possible to organize coordinated actions against terrorists who use barbaric acts against innocent civilians to achieve their political objectives. A similar alliance to accompany the work of the ICTY, incorporating local institutions and international organizations in a just fight against war criminals, is needed now more than ever in South-Eastern Europe.

We are aware that many more suspected war criminals in the region have to be prosecuted either by the ICTY or by the authorized national courts. The Government of Bosnia and Herzegovina welcomes the ICTY initiative to process some of the cases by the local judiciary structures under the auspices of the ICTY, suggesting that the Court of Bosnia and Herzegovina, which was established by the High Representative's decision, should be the first institution in the country for delegating such a task.

The United Nations is planning to conclude its current Mission in Bosnia and Herzegovina by the end of next year. Plans for transferring United Nations-led activities to the other regional organizations already active in the country are being prepared now. The position of the Government of Bosnia and Herzegovina is that the prosecution and trial of the indicted war criminals in the region should continue to be a United Nations responsibility, especially in light of the universal importance of the ICTY mandate after the tragic events of 11 September. The remarks and the proposals I have expressed on behalf of the Government of Bosnia and Herzegovina in this address to you today should have justified this stand.

The President: As was agreed in our prior consultations, the format for the remainder of this meeting will take the form of an interactive dialogue. As a result, no list of speakers for members of the Council has been drawn up. Let me invite those members who wish to make comments or address questions to Judge Jorda, Judge Pillay and Ms. Del Ponte to so indicate to the secretariat from now on.

Mr. Mahbubani (Singapore): I did not intend to be the first speaker, but I find that unless one raises one's hand very quickly one may end up being the last speaker. Madam President, I would like to join you in thanking Judge Jorda, Judge Pillay and Ms. Del Ponte for the briefings they gave us. The work being done by them is extremely important. I think that when the history of the twentieth and twenty-first centuries is written, it will be said that these Criminal Tribunals have in a sense advanced the frontiers of human civilization, because they have ended the culture of impunity and have shown clearly that mankind will no longer accept the kind of barbaric behaviour that we saw in Rwanda and the former Yugoslavia.

Given the importance of the work being done by these two Criminal Tribunals, we need to reflect deeply and think hard on how they are progressing. I am pleased that when Judge Jorda spoke to us earlier, he began his remarks by saying that he would like to engage in in-depth reflection, and he asked some questions along those lines. In that spirit, I will comment on the presentations and raise some questions.

The only problem we have is that the Council itself, unfortunately, is not a very reflective institution. It tends to function on autopilot most of the time. When the Council makes a decision, it is as if the train has left the station and nothing can be done to change its direction. However, if the Council does not pass judgement on the progress of these two Tribunals, it will be the court of public opinion that will pass judgement on their work. The Council, in turn, will have to be accountable to the court of public opinion.

Unfortunately, if one wanders along the corridors of the United Nations listening to discussions on these two Criminal Tribunals, there seems to be some bewilderment about the rate of progress that has been made so far. To be fair, I think all of the speakers have addressed this question. Indeed, Judge Pillay said a question asked by many members of the Council is why the output of judgements is so low: a single judgement this year and just eight in the four years since the trials started in 1997. In the case of the ICTY, I believe there have been 26 convictions and five acquittals in the same period.

If one looks at this output, the obvious question is whether these Criminal Tribunals will succeed in accomplishing the main goal for which they have been set up — to deter future genocidal leaders and send them a message that if they repeat what has been done in Rwanda or the former Yugoslavia, they will be hauled to court. For this goal to be accomplished, justice has to be swift and effective. If this is the result after five, six or seven years, the deterrent impact will be lost.

Fortunately, we have some good news. Undoubtedly, the detention and trial of Milosević are having a dramatic impact on the whole world. This single arrest has made a louder statement than those made by many of the other arrests. But it must be accompanied by other, equally important arrests; I believe references have been made to General Mladic and Mr. Karadzic and other high-level figures, and also to those regarding whom the Security Council has passed resolutions.

The more important point I intended to make here is the following. If this is the record of what the Criminal Tribunals have achieved after four to five years, what will be the long-term impact with regard to future decisions by the international community? When we consider such places as Sierra Leone, Cambodia or East Timor, where, as we know, atrocities have been committed, if any suggestion is made that we set up similar criminal tribunals, the international community walks away. It says we have already had two very expensive criminal tribunals; can we afford to have equally expensive criminal tribunals in other areas? So the impact of the work of these Tribunals is not limited to Yugoslavia or Rwanda; it extends to other areas in which we have seen similar massacres, similar barbaric actions.

I hope this point will be borne in mind as the work of the Criminal Tribunals progresses, because a great deal of attention will be paid to the expenses incurred by these courts. Here, I am pleased to see that efforts are already being made. I understand that seminars are being held in Dublin, Ascot and other places to look at how the courts are progressing. I hope that as a result of the lessons learned, administrative costs will be reduced and people will see that a significant change is taking place in how the courts are administered.

At the same time, I think a very important suggestion was made by Judge Jorda when he said that with the improvement of the domestic courts in the former Yugoslavia, we should also consider whether some cases can be transferred to the local courts so that the Criminal Tribunals can focus on the major cases. I understand that this will be a bit more difficult in Rwanda, but, as Ms. Del Ponte pointed out, as part of the traditional *gachacha* process in Rwanda, 11,000 local jurisdictions involving 260,000 local judges will be will be dealing over a three-year period with 120,000 perpetrators of the genocide.

One useful indicator as to the effectiveness of our work is a comparison of the costs of these local processes, which are doing very important work, with the costs of the International Criminal Tribunal of Rwanda to see how we can ensure a fairer allocation of resources, with the goal being to punish all those who were responsible for the genocide in Rwanda.

Finally, I think we may not have time in this meeting to reflect on what we have or have not learned as a result of today's discussions. However, in the wrap-up session at the end of the month, I will suggest some questions that we should address when we meet again next year to review the progress of these Criminal Tribunals.

Mr. Ryan (Ireland): I would like to record Ireland's warm appreciation for the comprehensive briefings the Council has received this morning from Judge Jorda, Judge Pillay and Chief Prosecutor Del Ponte.

Ireland has been following with the greatest interest the work of both Tribunals since they were established. We are honoured that an Irish national, Maureen Harding Clark, has been appointed as a serving ad litem judge at the International Criminal Tribunal for Yugoslavia (ICTY). My Government was

pleased to provide financial assistance towards hosting the second annual retreat of the judges of the ICTY and the International Criminal Tribunal for Rwanda (ICTR) in Dublin last month. The work of both these Tribunals remains of central importance in the parallel quest for justice and genuine national reconciliation. The past 12 months have witnessed a considerable increase in the judicial activity of both Tribunals.

Judge Jorda has advanced interesting and pragmatic ideas, in the context of developing circumstances in the region, for possibly spreading the burden of the ICTY. We look forward to further development of those good ideas. They could contribute to ensuring that the overall work of the Tribunal is completed within a reasonable time frame. The idea to establish a special court in Bosnia and Herzegovina is a very interesting one, and we look forward to hearing of further developments in that regard.

I fully agree with Judge Pillay's emphasis on the need to maintain an essential balance between efficiency and the need for thorough judicial process. Ireland is supportive in principle of the proposal to establish a pool of ad litem judges for the ICTR. The appointment of such judges could assist in alleviating the workload of that Tribunal.

Like others, we have been slightly concerned at the possible high number of future indictments, as referred to in the ICTR ad litem judge proposal. It has been helpful to hear the comments of the Chief Prosecutor Del Ponte in that regard, as well as the observations made by President Pillay. At the same time, I have noted Judge Pillay's understandable and legitimate desire for an early decision. It would perhaps be very interesting to hear in more detail, in due course, about the idea touched on of finding appropriate alternative judicial locations, which could contribute to the efficiency of the Tribunal's work and speed the overall process while ensuring, full judicial efficacy in all cases. I note that the ad litem judge proposal could achieve an overall 2007 target for the Tribunal's work. This is certainly very attractive, if it could be achieved.

Chief Prosecutor Del Ponte's elaboration this morning of overall prosecution policy has been very helpful. It is persuasive and is supportive of the processes and the proposals described by Judges Jorda and Pillay. These are complex challenges with important implications, some of which have been pointed out by my colleague from Singapore. However, I believe that today's exchanges will enable further consideration in a positive and appreciate overall atmosphere in the Security Council.

Mr. Strømmen (Norway): I would also like to thank the Minister of Justice of Rwanda, Judge Jorda, Judge Pillay, Prosecutor Del Ponte and the Permanent Representatives of the Federal Republic of Yugoslavia and of Bosnia and Herzegovina for their interventions this morning.

Our appreciation for the work of the two Tribunals was expressed yesterday during Norway's statement in the General Assembly's discussion of the two Tribunals' reports. The judgements of the Tribunals meet high standards and represent important contributions to international jurisprudence regarding the prosecution of the most serious international crimes. The experiences obtained so far through the work of the Tribunals constitute a stepping stone towards the forthcoming establishment of the International Criminal Court.

Our common goal is the timely fulfilment of the mandates of the Tribunals. In that regard, I would like to direct a few brief questions to the President of the International Criminal Tribunal for Rwanda (ICTR), Judge Pillay, relating to the proposal before the Council to supply the ICTR with 18 ad litem judges.

We acknowledge the resource-consuming nature of trying the most serious international crimes. We accept that the turnover of cases cannot be expected to be comparable to the administration of justice in our own national systems with regard to ordinary crimes. We also note with satisfaction the significant improvement in the performance of the Tribunal after the implementation of methods to streamline the conduct of business.

As regards the proposal for ad litem judges, we have a generally positive approach and are prepared to consider carefully how such methods could be implemented. My question in this regard is whether we have seen the full effect of the administrative measures already implemented. In other words, do we need ad litem judges now or should we consider further the effects of the measures taken? Along the same lines, would we not need a somewhat more clear picture of the number of new trials to be expected before deciding on how to proceed?

My second point refers to paragraph 99 of the Tribunal's report (A/56/351), regarding the relationship between the ICTR and the authorities of Rwanda. The Minister of Justice of Rwanda spoke today about the national legal system in Rwanda and its relationship to the crimes in question. Could the President elaborate a little on the Tribunal's present and planned cooperation with the Rwandan authorities aimed at preparing for the situation after the Tribunal's mandate has been fulfilled?

My third point has to do with the Outreach Programme of the ICTR, which we feel is an essential complement to the main public information activities of the Tribunal. Norway welcomes the continuous developments and improvements in the Programme. We encourage all States to support actively the continuing work of bringing the judicial process and its results closer to the civilian population of Rwanda. Could the President indicate what she sees as the main challenges to the Programme in the future and what the Council and the general membership of the United Nations, in general, can do to help?

Mr. Valdivieso (Colombia) (*spoke in Spanish*): I want to express my gratitude for the very interesting presentations we have heard from Prosecutor Carla Del Ponte, Judge Pillay, Judge Jorda, the Minister of Justice of Rwanda and the Ambassadors of Yugoslavia and of Bosnia and Herzegovina.

It is clear that we are reviewing the performance of the two Tribunals at the best possible time with regard to results. As is well known, things take place slowly in the administration of justice. But there is also an opportunity to reap the harvest. We share the opinions of the judges and of the Prosecutor with regard to the fact that this is the situation in which both bodies now find themselves.

We can see quite clearly that the reforms have been useful and that the effort to authorize changes to the original statute have been quite worthwhile. We are also convinced that the same should be done with regard to the International Criminal Tribunal for Rwanda (ICTR). The ICTR too must undergo a phase of reform and of streamlining its processes. We also hope that the time will come — preferably sooner rather than later — to appoint new ad litem judges.

We share the Prosecutor's view that it is necessary to maintain, and even accelerate further, the investigation and trial phase. We cannot really accept the view that terrorism is the subject of the day and that therefore everything else becomes secondary. On the contrary, it is clear that there is an imperative need to move forward in carrying out those investigations and bringing those aberrant cases to trial.

We know that reconciliation cannot occur if the subject of impunity is not tackled. Therefore, it is essential to heed the appeal made by the Prosecutor.

There are basically two questions that I would like to ask following these general views I have put forward. The first question relates to the Truth and Reconciliation Commission in Bosnia and Herzegovina, which, as we can see from the report, the Tribunal supports. We would like to know what the relationship of that Commission would be with the work of the Tribunal. What might be the international component of the Commission? What about financing issues? Also, might it be possible to extend this mode to other cases, such as that of Yugoslavia? I am referring to the Truth and Reconciliation Commission.

My second question pertains to the relationship with Belgrade, which has been mentioned on a number of occasions. As the Ambassador said, there has been progress, but there is also one case that has been commented upon on a number of occasions — the case of Mr. Milosević, which in its current stage obliges us to continue to reflect on how to improve the relationship. The report mentions the re-opening of the Office of the Prosecutor in Belgrade. It has also been said that access has been allowed to witnesses and that there are adequate conditions.

When it comes to the application of justice, we need to make progress. As we have said many times in this Council, that same kind of relationship is essential at the political level. It has been said — and we will be repeating it this afternoon — that it is necessary to strengthen the relationship, for example, between the Security Council on United Nations mission, in Kosovo and the Federal Government. This is also something that has been analyzed a great deal and that has yielded good results.

I would like to ask whether coordination between the Tribunal, including the Office of the Prosecutor, with the United Nations Interim Administration Mission in Kosovo — I am mentioning this because it is something significant to this Council — could improve the cooperation between the Tribunal, especially the Office of the Prosecutor and the Federal

Government. There might be some capacity there to work in the right direction of having greater cooperation in the specific case of the Federal Republic of Yugoslavia, the Tribunal and the Office of the Prosecutor.

Mr. Lavrov (Russian Federation) *(spoke in Russian)*: I would like to express our gratitude to the President of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the President of the International Criminal Tribunal for Rwanda (ICTR), Judges Jorda and Pillay, and also the Prosecutor, Carla Del Ponte, for their comprehensive briefings on the work of the Tribunals.

As is well known, the Tribunals were established by the Security Council as temporary judicial bodies, with a view to restoring and maintaining peace in those regions, to holding accountable the main perpetrators of serious international crimes and to promoting national reconciliation. It is quite obvious that the deadline sketched out for those bodies is now expiring. Such a lengthy existence of ad hoc Tribunals becomes increasingly difficult to justify, from both the political and practical points of view.

As far as the ICTY is concerned, the most timely issue at present is the establishment of a final deadline for its temporary jurisdiction. This task was supported by the Security Council in its resolution 1329 (2000). The Russian Federation has made concrete proposals in this area, and we are counting on the Council to continue its consideration with a view to reaching a consensus.

The ICTR, first and foremost, faces the task of enhancing the effectiveness of its activity. Of course, the Tribunal has recently increased its capacity for the trial process, and we note the measures undertaken for significant improvement of its administrative and management capacity. At the same time, a great deal remains to be done.

We are carefully studying the proposal of the President of the ICTR that the institution of ad litem judges be introduced into the Tribunal. Naturally, this request deserves comprehensive consideration by the Security Council, equal to that given a similar request last year by the judges of the ICTY. I would like to emphasize the rule — based on the United Nations Charter and other fundamental norms of international law — that the primary responsibility for punishing those guilty of war crimes and other serious international crimes remains with States, and this fact remains unshakeable. International criminal courts in this case play an important but subsidiary role, since they are not in a position to replace national systems of justice.

At the current stage, we will strive towards more active involvement of the national court systems of the States of the former Yugoslavia and Rwanda. The Tribunals need to focus on specific crimes where, for various reasons, States are not in a position to conduct investigations independently.

In this connection, we cannot agree with the fact that the Prosecutor has virtually already set up a timetable for conducting numerous additional arrests for some years to come. If such an approach were retained, even bearing in mind the ad litem judges, the ICTY and the ICTR could function for a very, very long time to come. We doubt the legal validity of such plans. It is very difficult, for example, to believe that all 136 people recently coming under suspicion by the Office of the Prosecutor really are the major organizers and instigators of genocide on the territory of Rwanda.

We also have questions about the validity of the Prosecutor's plans to conduct at least 36 more investigations by the end of 2004 with regard to the 150 suspects in the former Yugoslavia. The continuation of such a policy would in fact mean a loss of confidence in the national court systems of the Balkan States and Rwanda.

We note with satisfaction that today the Presidents of the ICTY and the ICTR and the Prosecutor talked about the need for further reliance on national legal systems. We hope that these words will be translated into practical steps with regard to the Tribunals' activities.

We also would like to recall that the Security Council, in its resolution 1329 (2000) — which established the institution of ad litem judges in the ICTY — took note of the position of the Tribunals regarding the fact that they must try the leaders and not the secondary figures. The aforementioned policy of the Prosecutor seems to us a departure from the positions of the Tribunals themselves as set forth in the resolution. At the same time, I would like to say that the ICTY and the ICTR should not go beyond the sphere of their competence. They should not pass political judgement on the nature of the cooperation of States with the Tribunals.

With regard to the ICTY, all the States of the former Yugoslavia recently have been showing readiness for constructive cooperation with the ICTY. This establishes a good basis for the earliest possible conclusion of that body's work.

We have also drawn attention to reports in the Yugoslav news media that Ibrahim Rugova intends to give the Security Council information on the training of terrorists in the territory of Kosovo. In the same reports there is mention that the ICTY thus far has not begun any investigations of former members of the Kosovo Liberation Army, which carried out reprisals against Serbs after the introduction into the province of international forces in June 1999. Now many of these figures are preparing to enter the Government of Kosovo that is being formed. Thus, we trust that the Yugoslav Tribunal will increasingly rely on cooperation with the national court systems of the countries of the region and will give greater attention to investigations of crimes on the territory of Kosovo.

Mr. Shen Guofang (China) (*spoke in Chinese*): At the outset, I would like to welcome the presence in the Council of Judge Jorda, President of the International Criminal Tribunal for the Former Yugoslavia (ICTY), Judge Pillay, President of the International Criminal Tribunal for Rwanda (ICTR), and Ms. Del Ponte, Prosecutor for both Tribunals, and to thank them all for having briefed us on the work of the two Tribunals over the past year.

Both the ICTY and the ICTR were created with two objectives. On the one hand, they are to conduct fair trials of those responsible for serious violations of international humanitarian law. On the other hand, the Tribunals are to promote peace and reconciliation in the regions concerned. The relevant Security Council resolutions have all emphasized the role of the two Tribunals in promoting national reconciliation and restoring peace and security in the regions in question. Both Tribunals should bear in mind this dual function in carrying out their work, and should accomplish their mission in an impartial and comprehensive manner.

Both Tribunals have made important headway in their work in many respects. In particular, both have made appropriate changes or adjustments to their rules and procedures, which helped enhance their efficiency and expedite their trial proceedings. Security Council resolution 1329 (2000) amended the statutes of the two Tribunals and created a pool of ad litem judges for the ICTY. It is our hope that with the assistance of the ad litem judges, the ICTY will basically be able to complete all the trials by 2007, and to finish thereafter the relevant appeals proceedings as soon as possible.

We have noted that the ICTR's efficiency is also being gradually improved. However, the ICTR is still overloaded with cases. We agree in principle on taking the necessary measures to increase the trial capacity of the ICTR. But such an increase in capacity is not for handling endless new indictments to emerge in the future; it is for expediting the trials of those already being detained. We would like to express our concern over the Prosecutor's intention to carry out investigations that would bring about 136 new indictments by 2005, and we hope that the Prosecutor will provide the Security Council with more detailed information on the cases she intends to pursue.

Finally, I would like to emphasize that the two Tribunals were created by the Security Council as ad hoc bodies. They cannot exist indefinitely. We hope that the two Tribunals can enhance their efficiency. The Security Council, at an appropriate time, should carefully consider the question of what should constitute a reasonable time frame for the two Tribunals to accomplish their respective mandates.

Mr. Jerandi (Tunisia) (*spoke in French*): Let me at the outset join the other delegations in welcoming Judge Jorda, Judge Pillay and Chief Prosecutor Del Ponte. I thank them for their very detailed statements on the situation and the activities of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

Judge Jorda told us that the priorities of the Tribunal should be rethought and proposed a few lines of thought that we find very interesting, especially as regards the new international dynamic in favour of the joint struggle against terrorism in all its forms and, of course, regarding the huge amount of work before the Tribunal and its capacity to double the number of trials in order to complete the proceedings of the Trial Chamber by 2007.

You have made this conditional, Judge Jorda, inter alia, on increased cooperation by the States of the region. These are important problems that you have raised — problems that have also been raised by Prosecutor Del Ponte. In this framework, we need to think about the means that could possibly be used to

encourage the States of the region. This also applies to Judge Pillay regarding the Tribunal for Rwanda. We need to think of how States might be encouraged to increase their cooperation with these Tribunals.

Judge Jorda also proposed that national reconciliation commissions could play a role in this framework. We agree with this, but it should be emphasized here that these commissions must not replace the action of justice, which is the only way to reconciliation. We have experienced the positive effects of justice on efforts for reconciliation, which themselves remain very important, throughout the missions on which the Security Council has embarked — in Timor, Rwanda, Burundi, Kosovo and elsewhere.

The relocation of certain cases will require judicial systems to be brought up to standard in the States of the former Yugoslavia, as you yourself emphasized, Judge Jorda. Do you believe that they could be brought up to standard by 2007?

In Rwanda as in the Balkans, our objective is to achieve peace and reconciliation while giving pride of place to justice. We think, however, that it would be dangerous if trials were to be unduly prolonged. We consider it necessary that all those who have been accused be brought to justice without excessive delays. It is important to ensure the reliability and quality of trials. President Pillay proposed in her report that the Council envisage creating, as the ICTY did, a group of ad litem judges that would make it possible to expedite judicial proceedings and to alleviate the Tribunal's workload. Judge Jorda indicated to us yesterday that the addition of 27 ad litem judges for the International Criminal Tribunal for Yugoslavia will make it possible to double the capacity of the Tribunal. We think that a similar solution could also be the right answer for the problems of the International Criminal Tribunal for Rwanda.

Mr. Maiga (Mali) (*spoke in French*): I should like to welcome to the Council the Minister for Justice of Rwanda and to thank Judges Jorda and Pillay and Ms. Del Ponte, the Prosecutor of both Tribunals, for their comprehensive briefings on the work and activities of the Tribunals and the indictments of those responsible for serious crimes committed in the territories of the former Yugoslavia and Rwanda.

My delegation believes that the International Criminal Tribunals for the Former Yugoslavia and Rwanda have a special responsibility and must be both functional and effective to that end. Indeed, the work accomplished by these Tribunals is extremely important in that, through their institutions, they seek to put an end to the culture of impunity that is still enjoyed by some who have committed the most hateful crimes in Rwanda and Yugoslavia. Through their roles, they are pioneers, in the primary sense of the word, in setting the stage for the establishment of the International Criminal Court, which, in the view of Judge Jorda, is extremely imminent. Similarly, the Tribunals are helping the United Nations in the creation of jurisdictions for Sierra Leone and Cambodia.

With regard to the International Criminal Tribunal for Rwanda, we believe that its mission is to dispense justice in order to contribute to the restoration of peace in the Great Lakes region and to reconciliation in Rwanda, which are priorities of the Security Council. To that end, the Tribunal is working to implement its mandate speedily, effectively and diligently. We believe in the timeliness of the proposal to amend the Tribunal's statute so as to establish a pool of 18 ad litem judges in order to strengthen its capacity to render verdicts, in view of its caseload. My delegation therefore wishes at this stage to express its satisfaction to the President of the Tribunal and her colleagues for the proposal to improve the Tribunal's functioning and effectiveness. My delegation welcomes the proposal and expresses the hope that the Council will soon take a decision on the proposed amendment so as to strengthen the effectiveness of the work of the International Criminal Tribunal for Rwanda. In so doing, we are of the view that the Council would thereby help the Tribunal to accomplish its work within a reasonable time-frame.

With respect to the International Criminal Tribunal for the Former Yugoslavia, we welcome the reforms under way, referred to by Judge Jorda at some length in his briefing this morning. These reforms should enable the Tribunal better to carry out its mandate and, in the long run, to assist reconciliation in the Balkans. In the same vein, my delegation is pleased with the important political changes that have occurred in the Balkans, allowing for the recent arrest and transfer to The Hague of Slobodan Milosević. We feel that this not only demonstrates the readiness of the Federal Republic of Yugoslavia to comply with its international responsibilities, but is also a concrete sign of a substantial and sustained improvement in the

cooperation which the Tribunal can hope to receive. As we can see from the Tribunal's report, it is also an event of great historical significance. For the first time ever, a former head of State is being tried under international legal jurisdiction for criminal acts committed when he was in office.

However, we remain gravely concerned by the fact that some well-known indicted criminals have not yet been apprehended, even when, in some cases, their indictments are more than five years old. We therefore call upon all States to offer their full cooperation so that we may achieve a lasting and genuine peace in the Balkans.

The cooperation of Member States, we feel, is of crucial importance to the success of the work of the Tribunals, which, as we know, have no real means of coercion and depend entirely on States in that regard. States should therefore arrest and bring to justice before the Tribunals those in their territories who have been accused. As Judge Jorda reminded us, these people gravely threaten the international public order, of which our Council is a guarantor.

The cooperation of States is even more crucial with regard to the judgements of the International Criminal Tribunal for Rwanda. In that connection, I would assure Judge Pillay that the authorities of Mali are prepared to deal with the five people condemned by the International Criminal Tribunal for Rwanda, whom she mentioned in her statement, and we appeal to other Members of the United Nations to strengthen their cooperation with the Tribunal.

Through you, Madam, I would like to pose some questions to our guests.

My first question refers to the statement made earlier by the Minister for Justice of Rwanda to the effect that the crimes being prosecuted by the Tribunal for Rwanda were perpetrated in that country some seven years ago. We wonder whether, seven years after the Tribunal began its legal work, it might not be time for it to be transferred from Arusha to Kigali, since its principal mission is not solely to dispense justice, but also to work for reconciliation in Rwanda and the Great Lakes region. Would it not therefore be timely to consider today the transfer of the Tribunal's headquarters from Arusha to Kigali?

My second question is for the Prosecutor. We all know that the two Tribunals share the same Prosecutor's Office. The crimes under their jurisdiction were committed in Africa and in Europe, but, after so many years of existence, the Tribunals continue to share the same Prosecutor. In view of the experience acquired by the Office of the Prosecutor and given the heavy caseloads of both Tribunals, would it not be appropriate for us to consider giving each its own Prosecutor's Office to address matters of exclusive interest to each?

Mr. Jingree (Mauritius): I would like to take this opportunity to welcome Judge Jorda, President of the International Criminal Tribunal for the Former Yugoslavia (ICTY), Judge Pillay, President of the International Criminal Tribunal for Rwanda (ICTR) and Chief Prosecutor Del Ponte to the Security Council Chamber today. I thank our three guests for their comprehensive and useful briefings on the progress of work and the activities of the Tribunals and on the state of the prosecutions under way against those responsible for serious crimes committed in the territories of the former Yugoslavia and of Rwanda.

The Tribunals were established to bring to justice all those guilty of war crimes and they play a crucial role in the promotion of human security by ending impunity. Both Tribunals have historic responsibilities; it is important that they function properly and enjoy the highest credibility. The effectiveness of the Tribunals is an important factor in the prevention of conflicts and should serve as a warning to potential perpetrators that war crimes and crimes against humanity will not go unpunished.

Allow me to address the ICTR first. My delegation takes note with satisfaction of the remarkable improvement in the performance of the Tribunal in spite of its limitations and the delays encountered at the beginning. It is encouraging to hear that since the first trials started in 1997, the Trial Chambers of the ICTR have rendered eight judgements in respect of nine accused. However, the extremely heavy workload of the ICTR is a cause of concern for my delegation. It is important to match the need to respect the rights of the accused with that of meeting the expectations of the victims, of Rwandan society and of the United Nations.

Mauritius therefore fully supports the request for ad litem judges for the ICTR to allow the trials of most of the present detainees to begin in 2002. That would greatly help to prevent any further delay in the work of

the ICTR; we should not forget that justice delayed is justice denied. My delegation believes that Judge Pillay's request for a pool of 18 ad litem judges for the ICTR would help in reducing the time period for completing the trials of all those persons who are currently being prosecuted or who will be prosecuted in the future before the Tribunal. We should also not forget that, with the evolution of the peace process in the Democratic Republic of the Congo, the imminent demobilization of the members of the former Rwandan Armed Forces (ex-FAR) and Interahamwe may give added responsibilities to the ICTR.

I turn now to the ICTY, which is doing a commendable job in serving justice and in bringing about significant changes in the political scene in the Balkans. The prosecutors of he ICTY recently confirmed that they had filed a new indictment against former President Milosević, charging him with genocide and other crimes allegedly committed in Bosnia and Herzegovina. That clearly demonstrates the seriousness with which the ICTY is undertaking its responsibilities. My delegation expresses the hope that all countries of the former Yugoslavia will cooperate fully with the ICTY to further the cause of justice and reconciliation in the Balkans.

We also agree with Judge Jorda that, given the new perspectives in the Balkans, there is a need to give serious consideration to the promotion of the new national reconciliation processes that the Balkan States are setting up, such as the truth and reconciliation commissions.

The experience gained through the ICTR and the ICTY has significantly influenced the idea of establishing a Special Court for Sierra Leone to prosecute persons who bear the greatest responsibility for the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law within the territory of Sierra Leone.

Finally, the work of the two Tribunals has confirmed the pressing need for the early establishment of the International Criminal Court as the competent international forum for the trial of alleged perpetrators of crimes.

Mr. Eldon (United Kingdom): As the time is getting on, I shall try to keep my remarks very brief. My thanks go first to our three briefers today: the Presidents of the two Tribunals and the chief Prosecutor. I am sorry that other business meant that I had to leave the room for some of their presentations, but I have been fully briefed by my delegation as to what was said. I think it was a particularly useful set of interventions, especially what we heard from Ms. Del Ponte about her plans for future prosecutions. It was very helpful, as others have said, to have that analysis and to hear about that intention.

The United Kingdom is strongly committed to both Tribunals. I do not need to repeat the details, but I want to assure those three invited guests and the Minister of Justice of Rwanda that that commitment will not waver, and that they can expect our continued support. We were pleased to hear about the progress made with internal reforms, particularly from the Presidents of the two Tribunals. We very much appreciate the efforts that are being made to maximize the use of resources — for example, the court rooms.

But as others, notably Ambassador Mahbubani of Singapore, have said, this needs to be a continuing process. The escalating budgets of the Tribunals remain, for us, a cause of concern. That said, we commend the recent initiatives that have been taken, for example the meetings of the judges from the two Tribunals, and the Web site of the International Criminal Tribunal for Rwanda (ICTR). All of those things are very helpful.

But, as others have said, we must remain focused on bringing the key perpetrators to justice. The Milosević trial is clearly going to be a landmark event, and we note that the indictment now includes the crime of genocide. It is clearly central that we secure the detention of the remaining indictees still at large, particularly Messrs. Karadzic and Mladic. In that regard, it is very helpful that Ms. Del Ponte has worked so hard to develop cooperation with the former Yugoslav States. We listened carefully to her comments about this — some encouraging and some, frankly, rather disappointing.

I would like now to say again to the Governments of the region how important it is that they cooperate with the Tribunal. I would like to emphasize again the Tribunal's importance in bringing peace, justice and reconciliation to the Balkans, and in helping safeguard the stability of the region.

On ad litem judges: it is encouraging that those now integrated into the International Criminal Tribunal for the Former Yugoslavia (ICTY) have made a good start. We are willing to give consideration to the

proposal for similar ad litem judges in the ICTR. But that investment, if approved, will need to show rapid results in a much swifter throughput of cases and in demonstrating clearly that a greater sense of urgency now exists.

It is important that we should all keep thinking about the exit strategy. We need to do that, however, while demonstrating that there is no diminution in our commitment to justice for the victims of war crimes in the two regions. We must, as I said before, concentrate on the main offenders and avoid indictments for lesser offenders, which should ultimately be dealt with by national courts. It was helpful to hear Ms. Del Ponte's forecasts in that regard, particularly for the Rwanda Tribunal, but I want to emphasize once again the point about concentrating on the main perpetrators.

Finally, we recognize that the mandate of the ICTY embraces the whole of the former Yugoslavia and that the Tribunal should and must be seen to be taking an interest in contemporary events. But, as I think others around the Council table have said, the long-term objective should be for national courts to prosecute new cases.

Mr. Doutriaux (France) (*spoke in French*): We thank Judge Pillay, Judge Jorda and Ms. Del Ponte for their briefings. I wish to comment on both the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

With respect to the ICTY, we thank Judge Jorda for reminding us of the reforms that are under way with a view to enhancing the effectiveness of the Tribunal. At present, the reforms are being fully implemented, which is making it possible to expedite the cases brought before the Tribunal. Twenty-seven ad litem judges have been appointed; six of them have already taken up their posts. There have been procedural and evidentiary changes. A Coordination Council and a Management Committee have been established. The Office of the Prosecutor has reorganized its investigative services. All of those are essential reforms, but they alone are not enough.

Here, let me make two comments. All speakers have noted that it is important for the States concerned in the activities of the ICTY further to cooperate with the Tribunal. Indeed, it is their obligation to do so. There has been progress, especially in the Federal Republic of Yugoslavia, where we have seen the arrest and the transfer to The Hague of Mr. Milosević. There has also been progress in Croatia. On the other hand, the issue of cooperation is a concern with respect to Bosnia and Herzegovina, and especially the Republika Srpska, where persons accused by the Tribunal have not been arrested; there is every reason to believe that they are hiding in the Republika Srpska. In that connection, Mr. Karadzic, Mr. Mladic and 29 other fugitives were mentioned here today.

Another comment — one also made by many other speakers — it would be best if the Tribunal, in order to fulfil its function and mission in the shortest possible time, concentrated more on the individuals primarily responsible, the main organizers and planners of crimes. This was also stressed by the Security Council in resolution 1329 (2001). Those who simply carried out orders should be judged by competent national authorities, as was made possible by the rules of procedure and evidence of the Tribunal for Yugoslavia, which allows the Tribunal to suspend charges in a given case in order to allow a national tribunal to take up the case.

I have a question for the Prosecutor, if there is enough time. How does she envisage the division of respective responsibilities with the local tribunals?

I also have some comments on the Criminal Tribunal for Rwanda. We note encouraging signs of the Tribunal's activities. However, from July 2000 to June 2001, a single judgement was rendered by the Tribunal, which is not enough. Naturally, we expect progress from recently implemented reforms, but there are still a number of difficulties.

We are willing to examine the proposal of President Pillay to create 18 ad litem judges. However, tangible results of such a proposed reform should be ensured. We would need to be able to better evaluate the impact of the reforms already made by the Registrar or the Prosecutor. It should also be seen to what extent other reforms can be envisaged, in particular by means of new modifications to procedure to speed up the Tribunal's activities.

Above all, it is indispensable that the Prosecutor's intentions on the subject of prosecutions be more precise and better defined. Ms. Del Ponte and other speakers have cited the figure of 136 new inquiries. Bearing in mind the restricted competence of the Tribunal for Rwanda, which is limited to 1994, we consider this figure to be excessive. In the case of

Yugoslavia, we should limit ourselves, as stated in resolution 1329 (2000), to those primarily responsible for the genocide: to those who conceived and planned it. The cases of those who simply carried out orders should be deferred to the competent national authorities. I am thinking in particular of the process that the Minister for Justice of Rwanda has mentioned: the *gachacha* tribunals, whose relevance should be underlined in this regard.

Mr. Herasymenko (Ukraine): I would like to welcome Judge Pillay, Judge Jorda and Chief Prosecutor Del Ponte and to thank them for their comprehensive and interesting briefings. I also wish to take this opportunity to pay tribute to all the judges of the Tribunals for their dedicated work and tireless efforts in discharging their mandate.

We note with satisfaction the continuous implementation of the reform process of the International Criminal Tribunal for Yugoslavia (ICTY) and the efforts of the Tribunal to speed its judicial work to allow it to complete its mission by 2008. We would like to emphasize that the ICTY can play an important role in the process of reconciliation and restoring peace in the region through the strengthening of national judicial systems in the Balkans. We fully agree with the conclusion of the Tribunal that while it cannot try all those who perpetrated serious violations of international humanitarian law, its work must be picked up by the domestic courts.

My delegation has consistently emphasized the importance for the Tribunal to fully use the existing mechanisms under the statute and its rules of procedure and evidence to defer its competence in respect of particular cases to national courts in the former Yugoslavia that have concurrent jurisdiction to prosecute persons for violations of international humanitarian law. The monitoring of the proceedings before national courts by the Prosecutor, coupled with the possibility for the Tribunal to request a deferral of a case to the competence of the ICTY, would ensure the impartiality, fairness and integrity of such trials for national courts. This in turn would substantially relieve the workload of the ICTY and allow it to concentrate on the most prominent cases and the prosecution of those most responsible for the commission of crimes within the jurisdiction of the Tribunal. You have addressed this issue in your statement.

In this connection, I would like to ask how the ICTY is going to otherwise encourage the domestic courts to pick up its work. I would like to underline the importance of these considerations in terms of the future consideration of the exit strategy for the ICTY.

The President: As I indicated earlier, we had intended to have an interactive dialogue, but in view of the comments and questions, I will now ask Judge Jorda, Judge Pillay and Chief Prosecutor Del Ponte to respond in turn to the questions raised and any comments they might also wish to clarify.

I give the floor first to Judge Jorda.

Judge Jorda (*spoke in French*): I would first like to thank the representatives, who, I believe, as they did last year and for several years before, make a contribution and always try to be very close to the developments in our work to help us with their considerations and proposals. Since it is late, I will not take long in order to leave time for Judge Pillay and the Chief Prosecutor to respond more specifically to some of the questions. I have one or two general comments and some more detailed comments on certain issues.

Forgive me if I do not respond to everyone. It seems to me that there is general or near-general agreement on certain points stemming from the interventions and contributions of Judge Pillay and the Chief Prosecutor. It seemed to me that all the representatives, at least those who spoke, were in agreement — I am thinking particularly of what the representatives of China and the Russian Federation said — that an ad hoc tribunal is not a definitive or permanent tribunal and that delayed justice is in itself not good. As was often said when the Tribunal was created and in the 1993 report of the Secretary-General, and as the Council stated again very clearly in resolution 1329 (2000), it is those with high-level responsibility, who planned the ethnic cleansing policies, who should be the first to be prosecuted by the Tribunals, which obviously cannot put on trial the thousands of responsible individuals with blood directly on their hands.

The Council has also said and approved that the local jurisdictions can perhaps now assume responsibility in carrying out international justice. I think that would be good, especially when we can see the future criminal court taking shape.

The Council has also said — echoing our own comments — that the truth and reconciliation commissions have a role to play in the process of national reconciliation.

So because this agreement seems to be general, — perhaps I am overstepping my authority — perhaps it could be the method for organizing this agreement and helping us in the most concrete manner possible. I had suggested in my statement — and perhaps I should apologize once again for going beyond my role — I had suggested, as the Council did last year, that perhaps a working group set up by the Council, which after all created us, could deal with all these questions pertaining to the reform of the ad litem judges. Why? Because on this specific item — the role given to local jurisdictions and particularly the creation of a special court — I think this is a very interesting suggestion — I think that the Council and we ourselves should know what precisely the status is of the reconstitution of local jurisdiction, particularly in Bosnia and Herzegovina. Let us not forget that Ambassador Klein and Ambassador Petritsch are there and can enlighten us on the exact status of the reconstitution of the legal system of this country.

I hope that I have responded to the concerns expressed particularly those of the representative of Tunisia. There, of course, is specific, concrete information on the establishment of the jurisdictions, beyond which — and I agree with Ms. Del Ponte's advice — a special jurisdiction could be established in a form to be decided. Having finished with the methods, I can now respond to certain questions.

First, on the outreach programme, I was happy and gratified to see that many of the Council members, particularly the representative of Norway, were interested in this programme. It is true that is extremely important to inform the populations of the States of the former Yugoslavia on the Tribunal's work. I found a certain contradiction in the proposals of the representative of the Federal Republic of Yugoslavia and in the proposals concerning the same subject by Bosnia and Herzegovina. I found that the proposals of the representative of Bosnia and Herzegovina responded precisely to the proposals and questions made by the representative of the Federal Republic of Yugoslavia.

Yes, yes, the outreach programme is an extremely complete programme that works through the media, particularly through regular television programmes, to inform the population of Bosnia and Herzegovina of the Tribunal's work. While this has not been done for the Federal Republic of Yugoslavia, I would respond that it is simply because thus far cooperation with Belgrade has been almost non-existent. But, of course, I still find encouraging the questioning by the representative of this country, which newly admitted to the international community.

Regarding a concern expressed by the representative of Singapore, I believe that we should remember every time that we speak of establishing a process of international justice not to say, "We will do as we did for Yugoslavia" or "We will do as we did for Rwanda". On the contrary, we should say, "We should hesitate before getting involved in the establishment of a new tribunal". We should think about that, and avoid clumsy expressions, particularly now when the creation of the international criminal court is being discussed.

Finally, I wish to say a couple of words on the Truth and Reconciliation Commissions. They are part of the overall picture. At the beginning, the Truth and Reconciliation Commission was an idea that was not very clear. The Tribunal itself, I would state, witnessed the emergence of these Commissions as a type of competition. Well, I would say to the Council that there is competition regarding national reconciliation. I myself went to Sarajevo last year to encourage the establishment of a Truth and Reconciliation Commission. I must point out that currently a bill is being drafted; in fact, it has been elaborated now for several months. We have had the opportunity to make comments, and we simply said: "Yes to the Truth and Reconciliation Commission", particularly in Bosnia, which is the country where this Commission has made the most progress, on the condition that the competencies of the Tribunal not be violated and that there not be an amnesty plan.

I turn back to the outreach programme, in completing my proposal. I must say that what currently impedes the development of mass media programmes is the fact that we did not include it in the permanent budget, and consequently we are dependent on voluntary contributions from countries.

I wish to thank all who have supported us this morning concerning the Tribunal over which I have the honour of presiding.

Judge Pillay: I thank the representatives for their comments. I shall endeavour to address some of their questions. One that clearly is the concern of many of them is: Would we be in a position to use ad litem judges and would we be in a position to complete our mandate by 2007?

I have prepared a plan that I will leave with you, Madam President, and with the representative of Norway, who raised the particular question. The plan indicates that if, for instance, we had ad litem judges available by April, we could immediately begin five new cases. In other words, we now have 26 trialists awaiting trail. We could try 14 to 17 of that number from April to June next year. That is a reasonable possibility. With the use of ad litem judges, we would be in a position to complete the trials of current detainees by 2004. I have said 2007 for future cases, based on the Prosecutor's estimate.

However, I share the concern raised by members as to the vast number and the uncertainty of who is going to be arrested and whether there are going to be 136 or 45 individual trials. With that precaution in mind, I make a positive prediction that we will be well placed to complete all existing trials of detainees by 2004 and allow a three-year period for new trials.

The other concern that was expressed was the impact of the measures of reform that have been taken. The judges of the International Criminal Tribunal for Rwanda (ICTR), together with the judges of the International Criminal Tribunal for the Former Yugoslavia (ICTY), have moved cautiously towards many measures aimed at expediting trials, but, as the representative of Ireland said in support of this, we have to be very careful not to compromise the interests of fair trial. I would give as a positive example of this the judges' intervention with regard to reducing the numbers of witnesses. Why do you need to call 100 witnesses? Why can't you call 50? That kind of intervention is a positive example of the impact on court proceedings.

A negative, or troubling aspect, is that we need more court management measures in place to address the question of translations. In the media case, for instance, which is ongoing, we are talking about 600 audio-radio broadcasts in Kinya-Rwanda that have to be translated into French and English. An hour before I left to board the plane, a new issue came up — the parties discovered that they were actually sitting with 100 tapes in Kinya-Rwanda of broadcasts of Radio Muhabura, which is the RP of radio. Now, we do not have translators who can translate from Kinya-Rwanda direct into English. It has to go from Kinya-Rwanda into French and then into English. This is a practical problem that has to be addressed from a management point of view. If we are to complete the mandate as the representatives expect us to, then we need both extrajudicial capacity and the resources to make it work.

We bear in mind that, as the representative of the United Kingdom has pointed out, reform measures are a continuing process, and we will continue to address them. At the moment, for instance, the judges are dealing with several motions with regard to judicial notice. If we can reach a stage where we can take judicial notice of widespread and systematic killings, for instance, or that genocide took place over the whole of Rwanda, that will narrow the issues. That is something we are working on.

I would rather not enter into such questions as the transfer of the Tribunal headquarters to Kigali and the cooperation of the Rwandan Government after our mandate is fulfilled, because of the limits of my own profession and the fact that these are political issues. Suffice it to say that fair trials have to be perceived as fair, and there is some concern about the security situation in Rwanda. This has been expressed by defence counsel.

The representative of Norway referred to the information and outreach programmes that have been put in place and asked what the prospects are for their further development. At the moment, the information office set up by the International Criminal Tribunal for Rwanda (ICTR) functions in Kigali alone. We need to expand this programme so that it reaches the rural areas in the whole of Rwanda. We are working on this, and we could do much more if we received the level of outreach funds that the International Criminal Tribunal for the former Yugoslavia (ICTY) has reached by way of donations. A welcome sign, however, is that the Government of the Netherlands has committed itself to helping us set up a video link between the ICTY and the ICTR, and between the ICTR and the Office of the Prosecutor in Kigali, as well as this information centre. That would enable the Tribunal to spread its information work much farther.

In conclusion, I would like to say that the judges of the ICTR and our new Registrar, Mr. Dieng, are committed to making a very firm effort to ensure that the ad litem reform is used to the fullest extent.

The President: I now give the floor to the Chief Prosecutor, Ms. Del Ponte.

Ms. Del Ponte *(spoke in French)*: I will be very brief. I also want to express thanks for the comments that have been addressed to me. I must say that I agree completely with some of them. As for others, I have some doubts, but this is not the right time to discuss them.

I would like to say a few words on the situation of the International Criminal Tribunal for Rwanda. One hundred and thirty-six investigations means 136 suspects under investigation. Some doubt has been expressed as to whether these are major perpetrators. I will give you the information that we have from the Government of Rwanda; it has placed on its official list of first-class category perpetrators of genocide 2,899 persons: planners, organizers and supervisors. This means that, according to the Government of Rwanda itself, there are over 2,800 in the category of persons highly responsible, whereas on our own list there are 136. Of course some of them have died; in the case of others, we will be unable to get the necessary evidence; and still others have disappeared. Thus we will have even fewer indictments — perhaps some 100.

As far as the transfer of cases to a national Tribunal is concerned, there is a problem with Rwanda, as I said. Rwanda still has the death penalty, so it is impossible to transfer these cases there, even without considering that Rwanda has 2,899 persons accused of genocide who need to be brought to trial and cannot go through the *gachacha* system. Of course, even if the information on proceedings could be transferred to Rwanda, most of the persons accused are not in Rwanda — they are abroad. Thus the problem of extradition to Rwanda arises.

With regard to a transfer of the Tribunal to Kigali, this measure is being pressed, but a motion has not yet been presented. However, could begin by at least holding hearings there to facilitate access to testimony, so that witnesses who cannot travel to Arusha could be heard in Kigali. There were problems in arranging for a hall, which have been resolved. But that is certainly the right direction. It would be very positive if the Tribunal could be transferred to Kigali for the last years of its activities.

As for the International Criminal Tribunal for the former Yugoslavia and the division of labour between the Tribunal and local jurisdictions, of course this presupposes a certain number of preconditions, which unfortunately have not yet been met — for instance, the protection of witnesses; the independence of these Tribunals — whether Trial Chambers or Appeals Courts; and, in general, the process of reform in the local judiciary apparatus. I think it is up to the international community to encourage the development of an independent justice system in the former Yugoslavia. As I see it, this is a prospect for the future, but it is a future that, with your support, may be the near future.

I would like to recall that our investigations do not concern those who merely carried out orders. I have provided a list of 108 suspects. We have estimated that, on average, over 8,000 — I repeat, 8,000 persons — committed crimes that fall under our jurisdiction in the former Yugoslavia. Out of 8,000 suspects, we are confining our activity to 108. Truly, I believe that follows the mandate given to us by the resolution. The suspects under investigation have been essential links in the committing of these crimes of war, genocide and crimes against humanity.

The President: The debate that we have had this morning clearly indicates the importance which members of the Council attach to the work and operations of the Tribunals — the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia. On behalf of the members of the Council, I wish to thank the Presidents and Chief Prosecutors of the Tribunals for their contribution to the work and deliberation of the Council on this very important subject.

There are no further speakers on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The meeting rose at 1.20 p.m.